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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 621

INDIANAPOLIS NEWSPAPERS, INC.,
Petitioner

vs.

ROBERT H. FIELDS,
Respondent

BRIEF FOR RESPONDENT IN OPPOSITION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

(A) QUESTIONS PRESENTED.

Petitioner's "Statement of Questions Presented" (Pet. pp. 2-5), and its "Statement of the Case," (Pet. pp. 6-8) misrepresent the record and hence distort the questions deserving consideration upon its petition.

Respondent submits that, in the context of the record, the questions petitioner raise are:

1. Was the evidence sufficient to warrant the jury's verdict:

(a) That the publications conveyed the alleged meanings, to-wit: That Respondent was guilty of (i) accessory after the fact to the murder of Elmer Reagan by (ii) in-

timidating an eye witness (McAdams), to, and (iii) maliciously prosecuting an innocent man (William Brown) for, that murder?

(b) That petitioner published these accusations with knowledge, or with reckless disregard, of their falsity? Petitioner's "Clear and Convincing Evidence" question raised as its No. 3 is related to this question, hence will be discussed, below, along with this question.

2. Was it a violation of Petitioner's constitutional rights to admit evidence:

(a) That, prior to the publications, Petitioner threatened to destroy Respondent, under instruction to consider such evidence, "*only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not*"? (P. Sep. App. p. A 221);[1]

(b) Of the falsity of the publications, without proof of petitioner's pre-publication knowledge of such evidence, under instruction, "*Plaintiff has the burden of proving . . . Second: That the accusations were false. Third: That the defendant knew said accusations were false or published them with reckless disregard of truth.*

(1) Code of references. -2-

Pet.	= The petition.
R.	= Official Record. Additional page references following the official page number refers to the pages of a multiple paged exhibit having but one official page number assigned to it.
P. App.	= Petitioner's Appendix.
P. Sep. App.	= Petitioner's Separate Appendix.
R. App.	= Respondent's Appendix.

"In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendants' knowledge of falsity or reckless disregard of truth" (P. Sep. App. A 219, 20).

(B)

COMMENT ON PETITIONER'S "STATEMENT OF THE CASE"

Petitioner here asserts broad conclusions, regarding collateral facts, all of which were rejected by the jury upon overwhelming, or uncontradicted, evidence, mostly the latter, and ignores the salient facts. It disclosed virtually none of the facts upon which respondent relied and which warranted the verdicts and judgment.

(C)

SUMMARY OF ARGUMENT

Petitioner (orally) threatened Respondent, e.g., "to kill the son-of-a-bitch politically" and "put him through journalism school," and (published) "he is shooting for real trouble," but that it could "make him look good in the public's eye" if Respondent would yield and report to it names of suspects and the objectives being pursued in major investigations. Petitioner refused, so as to protect later cleared suspects and preclude at-large confederates from destroying evidence. Both these considerations were present in the gang murder then under investigation and over which the controversy came to a head. For the ensuing 8 months, Petitioner accused Respondent of concealing

official conduct. On the eve of the libel articles, Petitioner was asserting, "We are going to put him through journalism school."

Petitioner then related to a convicted thief, *(who had 4 months to serve)*, that it had heard that a Sergeant killed an inmate; took the thief into the chambers of a judge *(who had not sentenced him)* and, made a promise *(later kept)* to get him released if he'd confirm the accusation, commenting *(in the criminal's presence)* to the judge *(who had neglected to pay State and Federal taxes for 10 years, and who was up for re-election)* that with such a statement, they could get rid of Respondent as Sheriff. By these means, the false accusation was procured from the convict.

Although overwhelming evidence *(known to Petitioner at that time)* branded the accusation false, in the face of which the criminal soon confessed, *FIRST*, to Respondent, *SECOND*, to the same judge in open court, and *THIRD*, to the Grand Jury, Petitioner persisted for two months in accusing Respondent of (i) accessory to the murder by (ii) intimidating the criminal, and (iii) prosecuting the inmate who did (later convicted) kill the deceased inmate.

The judge refused to hear the evidence of falsity at the time the criminal confessed. Petitioner banner headlined that this judge would protect "come forth" ex-inmates, who would denounce Respondent.[1] Some did, and Respondent identified each incident and proved what did or did not occur. These accusations were employed to support the original accusation. Before the first recovery publication, Petitioner learned of conclusive evidence the criminal

[1] Two ex-inmates said that, during the 2 years of Respondent's incumbency as sheriff, they had been, twice in the case of one, and 6 or 7 times in the case of the other, in jail and had seen no brutality. The reporter incorporated these statements in his manuscript and his superiors removed same from the published reports.

had lied. But it persisted in 32 further accusatory publications.

Petitioner planned to visit Grand Jurors in their homes, during its investigation, and later attempted to intimidate them by a cartoon threatening them with adverse publicity. When, after hearing 129 witnesses, the Grand Jury found the accusation false, Petitioner denounced it as a "whitewash" and, when the Jurors were under assassination threats, Petitioner published their names, addresses and photographs on page 1.

During the investigation, Petitioner offered to lay off of Respondent if he'd yield to its demands else it would publish other false accusations, and when Respondent refused, it so published, which were promptly proven false.

In the long and prolific series, Petitioner created code words, phrases and paragraphs, which enabled it to keep the accusations clear to the public in shorter articles. Petitioner later published a boast that it had destroyed Respondent, as it had threatened.

Petitioner ignored Respondent's pre-suit offer to give it the conclusive evidence of falsity which, at the trial, stood uncontradicted.

The pattern of the jury's 6 verdicts indicate it gave great weight to the 7 knowledge or reckless disregard, etc. instructions, following strictly this Court's holdings.

LAW ARGUMENT.

Petitioner urged, below, that it *"had a constitutional right to defame"* Respondent and that *its knowledge, or recklessness, could only be proven by its own admission.* It also contended that its *threats were inadmissible and proof of the truth of its many publications was hearsay.*

Overruled on these points of law, the trial resulted in 6 verdicts ($10,000.00 each) and Petitioner now raises these questions here.

(D)

RESPONDENT'S STATEMENT OF THE CASE

(i) The salient facts.

1 Hynes murder case and Respondent's disobedience

November 1, 1964 Petitioner was angered, because Respondent had *failed to report to it* regarding a successful overnight investigation of the murder of Lee Hynes, a Mobley Mobster (R. pp. 6241, 2) supposedly for tipping County Police (Deputies) to the mob's hideout when recaptured after a jail break and a robbery (R. pp. 2596 & 4818). Petitioner's reporter (Johnson), in 3 midnight calls to Respondent's home, cursed and ordered him, "*By God, you'd better shape up*" else Petitioner would (which it did) "*keep you on the front page as long as it takes.*" (R. App. pp. 1a-3a) Petitioner then published that Respondent "*is shooting for real trouble*" stating, however, in concluding the same article, that it could "*make him look good in the public's eye*" if he'd report to it. (R. App. p. 4a)

Simultaneously Johnson asserted to numerous persons that he'd "*kill (or get) the son-of-a-bitch, politically, if it takes a year.*" (R. App. p. 5a-6a) and "*he'd better remember what happened to his predecessor,*" who died of ulcers (R. App. p. 4a-5a) and who had been attacked by Petitioner for firing a deputy who was caught patronizing a bawdy-house (R. App. p. 5a). Petitioner's City Editor, Lawrence Connor backed Johnson when Respondent told him these facts (R. App. p. 5a) and Petitioner began pub-

lishing charges that Respondent was concealing his official operations. (R. pp. 4141).[1] These charges continued from mid-December, 1964, on into the libel articles (R. p. 48, first paragraph; p. Sep. App. p. A17). The same theme was interlarded into most of them from October 27th to December 28, 1965. (P. Sep. App. pp. A1 to 172).

On the eve of the libel articles (August-October, 1965), two of Petitioner's reporters were asserting, "*We're going to put him through journalism school.*" (R. pp. 3997,8).

2. Petitioner's defense of Sgt. Chas. Haine.

Beginning August 11th, 1965, Petitioner was devoting its columns to the defense of Sheriff's Sgt. Charles Haine. (R. p. 2513; 2535; 2539; 2540; 2543 through 2560, and 6275), whom Respondent (acting on a State Police tip) (R. p. 6267,9), personally caught, in the act, taking a $200 bribe from another Mobley Mobster (Leon Johnson). (R. p. 6269, 73).

Subsequent investigation disclosed Haine had taken another $200 bribe from Florence DaGrossa (R. pp. 3028, 30) (via registered mail from Brooklyn, New York), (R. pp. 3226, 7), sent to Haine's home, on behalf of her armed robber son (Robert Squillan) (R. pp. 3291, pp. 2 and 23), to induce Haine to recommend a suspended sentence to Judge Eugene M. Fife, which he successfully did (R. pp. 3291, pp. 8, 10 & 35); also, that he stole $256 from another mobster (Schriver) while transporting him from Wisconsin on extradition. (R. pp. 7260, 8 and 2573).

---

[1] In January 1966 Respondent thought he and Johnson had reconciled their differences, however, Johnson viewed the agreement differently. (R.App.p. 7a)

3. Admits Haine evidence overwhelming, but defense continues.

City Editor Connor admitted, but never published, that the evidence was overwhelming (R. pp. 5858, 9). October 22, 1965, after a 3-day trial (October 18, 19 & 20, 1965), the Sheriff's Merit Board ordered Haine discharged (R. pp. 2559, 60).[1] However, Petitioner resumed its defense of Haine on November 3rd, continuing on the 4th, 11th, 12th, 23rd, 26th, December 1st and 28th. (R. pp. 57, 59, 68, 70, 81, 86 & 100).

Petitioner's defense of Haine took the form of (1) attempting to prevent Leon Johnson from testifying against Haine by either intimidating, or inducing his gang murder, by publishing, front page, that it was Leon Johnson, not Lee Hynes, who tipped the police to the mob's hideout, concluding, "*They killed the wrong man.*" (R. App. p. 8a). (2) By this own admission, Johnson asked Mrs. Dagrossa to change her story that that the $200 was sent Haine because Haine "had been so good to her and her son" to, that she sent it for "transportation cost and clothing" (R. pp. 3000, 1; 3005), and petitioner published that she agreed to so swear (R. p. 2546). Mrs. Dagrossa swore she did not so say, nor agree to so swear, that the $200 was to induce Haine to recommend the suspended sentence (R. pp. 3291, p. 10). Squillan's trial came up in March, (R. p. 3291; p. 35) after Haine received the $200 in January (R. pp. 3226, 7), then assuring he could successfully procure the suspension from Criminal Court Judge Eugene M. Fife (R. p. 3028), which he did; (3) in-

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[1] Respondent had no "deputies," though so-called from usage. By statute *(Burns Indiana Statutes 49-2814,26)* they were "Members of the Marion County Police Force."

The Merit Board made all appointments and discharges. Respondent, as ex-officio Director of the "Force" was restricted to 15-day suspensions (Burns 49-2816) in disciplinary cases.

terviewing Schriver in prison and reporting a statement falsely favorable to Haine (R. p. 2549); (4) reporting Schriver's Merit Board testimony diametrically opposite to what he swore, but as it had reported the interview (R. pp. 7260, 5), and (5) editorially proclaiming that Haine was framed and that Respondent, not Haine, had something to explain (R. App. p. 8a).

4. McAdams follows immediately after Haine.

October 21st, the day following the Merit Board trial, Reporter Johnson arranged with Judge Fife to interview McAdams in one of the court's office rooms.

McAdams had served almost 2 of a 6-months' theft sentence in Jail (R. pp. 6168; 6169). McAdams specifically requested jail, instead of the State Farm, after pro-tem Judge Carson (not Judge Fife) had sentenced him to the Farm (R. p. 6168).

5. McAdams tells what Johnson said he had heard, and goes free.

Johnson told McAdams he had heard Sgt. Donovan King had beaten and killed inmate Elmer Reagan (a 50-year old alcoholic derelict, broken in body and mind). Johnson asked for confirmation, McAdams replying, "That's a pretty good story," but that "he wouldn't talk until he got out of jail." Johnson asked if he would talk to the Judge and McAdams assented, asking if Johnson thought he could get out of jail. Johnson said, after reciting how the Judge could release him, *"That's up to the judge, and it all depends upon what you have to say."* (R. App. pp. 9a-12a).

As he and McAdams entered the Judge's chambers, John said, *"I think he's got a murder,"* (R. App. pp. 11a

12a). Then McAdams confirmed Johnson's story, embellishing it with some details of an altercation between Sgt. King and a younger prisoner (Bryant). Then he related the Bryant incident, omitting the borrowed details (R. pp. 3811 & 2595).

Johnson said to Judge Fife that if McAdams signed such a statement and "it was brushed under the rug, *'it could only lead to having a new Sheriff.*" (R. p. 7324, 5 see R. App. p. 12a).

McAdams signed the accusatory statement the next day (Friday, October 22nd, in a room of Judge Fife's court (R. p. 7325). Johnson suggested McAdams' release to Judge Fife, who said he would *"tend to that"* and Johnson left assured (R. p. 7184).

McAdams, 35, had been a practicing criminal since he was a teenager (R. pp. 3966, 7 and 6161 to 6217), and Johnson knew it (R. p. 7180).

Monday, October 25th, Johnson reminded Judge Fife, who said he'd forgotten and McAdams was shortly released by Judge Fife, purporting to reduce his sentence to time served, unbeknown to the Prosecutor, or any law officer (R. p. 7185, 6) We say "purporting" because this violated Indiana law, even if Judge Fife had been the sentencing judge:

> *"Providing, that the court may not suspend the execution of sentence after the defendant shall have commenced to serve his sentence of imprisonment." (Burns Indiana Statutes 9-2209).*

And in any direct action to vacate a sentence, the prosecuting attorney must be notified. *State ex rel Powers vs Vigo Cir. Ct. et al. (1956) 236 Ind. 408, at p. 413.*

The same day. (October 25th), Johnson told Deputy Prosecutor New that he had some *"major irregularities"*

"which involved Mr. Pearcy (the Prosecuting Attorney) . . . and . . . the Sheriff and the jail staff and that it was a bomb . . .".

New took him into Pearcy's office and repeated this to Mr. Pearcy, who said he was not involved in anything and would prosecute any law violator, including Respondent, despite their close friendship. Johnson did not say what the "bomb" was (R. pp. 3960-3963).

There was no evidence of any friendship between the Prosecutor or Respondent and King, who, like Haine, was on the Force when Respondent became Sheriff, hence Director. Petitioner knew this (R. p. 5975).

6. October 26th, Grand Jury, and McAdams' first appearance.

The next day (Tuesday, October 26th), Petitioner requested Deputy Prosecutor Bath to take McAdams' statement to the Grand Jury "*immediately and directly*," unbeknown to either the Prosecutor or Respondent, (R. pp. 3999, 4000), as his superiors expected him to do (R. p. 5975). Bath also took the statement to Pearcy (R. p. 4000, 1), who called Respondent over and gave him a copy, and directed that King and 2 other deputies (Grunden and Marshall), named by McAdams appear at once before the Grand Jury (R. p. 4045, 7). Respondent said he would get to the bottom of the accusation, petitioner reporting that he was "visibly shaken." (P. Sep. App. p. A 5).

In his accusatory statement, McAdams gave his residence as "1202 Perrysville Avenue, Danville, *Illinois*." (R. p. 2595). Pursuant to instructions, Bath sought information as to where McAdams could be served a Grand Jury subpoena. He obtained the address of 1215 North Arsenal Avenue, Indianapolis, Indiana, and wrote it on

the McAdams statement, from whom he could not recall (R. p. 4001, 2). When the subpoena server found McAdams was not there (R. pp. 3953, 4), the Prosecutor called Respondent to help find McAdams (R. pp. 4085, 6). A visitor slip showed McAdams had friends on Bate Street, where Deputies Robert Atwell and Sgt. James Wells found and requested him to go to the jail, which he did, driving his car (R. p. 4155, 7). Upon arrival, he was asked if he signed the statement and he said he did, that it was "political" to get rid of Respondent (R. p. 4333, 4). Respondent was notified that McAdams was there and called the Prosecutor, who sent over a subpoena.

Respondent did not see McAdams on this occasion. At Respondent's instructions, Sgt. James Mellene, who was in charge of the Reagan investigation, accompanied them and brought McAdams back for questioning (R. pp. 4335, 6).

7. McAdams retracts three times.

McAdams was taken to Respondent's office. Respondent said to McAdams he had been told that McAdams said the statement *"was some kind of political deal to get me out as Sheriff."* McAdams replied that the statement was *"a bunch of lies" "cooked up with Rick Johnson and Bud Cottey"* and he gave it *"because they said they'd get me out of jail."* He said he had told the Grand Jury the truth and agreed to give a truthful statement to Sgt. Mellene (R. p. 6285). He signed a repudiation statement (R. p. 2605, 9).

It was this incident upon which Petitioner based its repeated accusations of intimidating McAdams (A. App. pp. 12a-25a). Permitting Respondent and those present to testify to what occurred at this time is what Petitioner complains of as hearsay. (R. pp. 6283, 6).

As the subsequent Grand Jury Report (November 23rd) shows, McAdams did repudiate the statement before it (R. p. 5747), as he also did in open court on October 28th (R. p. 2839, pp. 17 to 21). In this hearing, Judge Fife refused to permit McAdams to tell what happened or hear other evidence proving false his accusatory statement, although the Prosecutor "implored" Judge Fife to hear such evidence (Id. pp. 22 to 30), Judge Fife saying, that morning, he had read of more brutality in Petitioner's paper, (Id. pp. 24, 25) (the Derringer case), and releasing McAdams had been none of the Prosecutor's business (Id. p. 26).

While taking his statement, McAdams saw a whiskey bottle in a desk drawer with one or two "shots" left, and said he'd like to have it, since he had a "hangover." After signing the repudiation he left, soon returning, and asking for the bottle. Mellene directed someone to take it to McAdams, who was outside the door. It had been evidence in an unrelated case. (R. pp. 4339-4343).

8. Erbecker, Johnson steers McAdams to him.

McAdams then returned to Bate Street, where Johnson soon arrived. McAdams told Johnson the Grand Jury had directed him to reappear the next day for a "lie detector test" and further questioning. Johnson suggested that he consult "*his attorney, Mr. Erbecker,*" (R. pp. 7192, 3), *who had not been his attorney,* (R. p. 6179), but who was attorney for most of the other criminals petitioner later quoted in denouncing Respondent.[1]

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[1] (Anthony: R. pp. 5416 & 7304) (Burton: R. pp. 7297) (Daniels R. pp. 4208 & 7290) (Haine; R. p. 2589 to 2891) (Kaufman: R. p. 4198) (Ritzert: R. p. 4249 & 7293) (Squillan: R. 2543, 4 & 7278, 81) (Thomas: R. p. 5398, 5th page of statement) (Wright: R. p. 5385, 2nd page of statement) (Williamson: R. p. 7300) (Young: R. 4246, reverse of page 3).

Thereafter Erbecker was McAdams' attorney (R. pp. 6164-67).

Petitioner knew that Erbecker had a bad reputation (R. p. 5498). (R. App. pp. 44a-45a)

The next morning (October 27, 1965) the first libel publication appeared (R. p. 43, 44). Before dealing with it, and the other 43, (36 of which ran every day through December 1, 1965, plus 8 more through December), we will cite what the evidence disclosed the facts to be, continuing to note what Petitioner knew.

9. Brown, Wm. Kicks and stomps Reagan; Petitioner was aware of it.

Reagan (50), an alcoholic derelict, died Saturday, August 7th, of pneumonia and "complicating bilateral multiple (14) rib fractures" (R. p. 4842). He sustained these injuries on July 14th when kicked and stomped by inmate William A. Brown (26). The assault was witnessed by 4 jail trustys, who called, in the heat of the fray, and 3 deputies ran and shackled Brown. (R. App. pp. 25a-27a)

Petitioner knew of these witnesses, and the substance of what they said, as early as August 14th (R. p. 2541; 7373, 5).

The same day Reagan was sent to General Hospital, arriving at 5:09 P.M. (R. p. 6779-stamp in lower left corner), and Sgt. Haine was directed to investigate the assault (R. pp. 2514, 5 & 2635, 6).[1]

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[1] Petitioner's statement (Pet. p. 6) that Reagan was left for days after he was beaten is an untruth, supported by no evidence.

10. Crick, Brown suspected of beating; Haine's investigations.

It was thought Brown had also attacked Danner Crick (62), another alcoholic derelict, who had been sent to General Hospital at 6:30 P.M., August 13th, and died at 1:30 A.M. of pneumonia. Post mortem disclosed that Crick had two fractured ribs. There was no finding they contributed to his death (R. p. 6910).

Sgt. Haine was also directed to investigate Crick's case. He took an exculpatory statement from Brown, "*I gave him a few baby taps on the face.*" That was all Haine did (R. pp. 6917, 8).[1]

Haine did nothing regarding the Reagan assault, or purloined the Reagan case papers, as he wrote Squillan he had done, for him, in the Squillan case (R. p. 3243). The drunkeness charges against Reagan were dismissed August 5th (R. p. 3329). Hence he was not in custody, at death, which petitioner knew (R. p. 2508, 2nd page, par. 5A). For that reason, the Hospital did not notify Respondent (R. p. 2066). The post mortem was the day after death (Sunday, August 8th) (R. pp. 4841, 2). August 10th (Tuesday), an Indianapolis Times[2] article, quoting the jail Captain, concluded that Reagan had fractured ribs and died from "fight injuries in the jail" (R. p. 2327). There is no evidence that anyone did aught to conceal the incident or the truth of its details.

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[1] Except for Brown's exculpatory statement, apparently repeated to Sgt. King (R. p. 6916), that Crick had been sick for 2 days, there is no evidence of delay in sending him to the hospital, as asserted by petitioner. (Pet. p. 6)

[2] The Times was the only Indianapolis daily not owned by petitioner. It ceased publication on October 11, 1965 (R. p. 4451), 10 days before Johnson procured McAdams' accusatory statement.

11. Johnson reads of Reagan's death in Indianapolis Times, Aug. 10th.

Reporter Johnson admitted he read the August 10th Times article (R. p. 7150). He went to the Sheriff's Department and no record of the Reagan investigation could be found. Haine, under suspension (on the Leon Johnson bribe), was called several times at his home, talking to both Reporter Johnson and deputies. At first he acknowledged assignment of the Reagan case, saying the papers were in his desk. They weren't. Called again, on the same occasion, he denied assignment of the Reagan case, saying he was thinking of Crick (R. pp. 2481, 3). The case was then assigned to Sgt. James Mellene.

August 11th, petitioner published the article calculated to intimidate Leon Johnson, "*They killed the wrong man*" (R. App. p. 8a). That afternoon Respondent ordered Haine discharged (R. p. 2506), which led to the merit Board trial in October.

12. Petitioner publishes Reagan death, concealed, Aug. 12th et seq.

The next morning (August 12th) petitioner made its concealment claim in an 8-column banner headline:

> "*FATAL JAIL BEATING BARED*"
>
> *(2nd paragraph)* "*The 26 year old man believed to be the attacker and mentally ill has been freed and records on the beating have disappeared from the Sheriff's office, it was learned.*" (R. p. 2508)

There was no mention of Haine's connection with the case. The assertion that Brown had been freed was false. He was held in the Psychiatric Ward at General (R. p. 2346; Times article) and (5786-commitment papers). Peti-

tioner knew this. It was published, routinely, in its afternoon paper, The Indianapolis News (R. p. 2512).

The Grand Jury, after hearing 129 witnesses, indicted Brown for second degree murder. At his trial Brown admitted a mild assault and immediate shackling by the 3 deputies (R. pp. 4100; 6643, 51). The jury found Brown committed the [redacted]nse but not guilty because of unsound mind (R. p. 3967).

Beginning October 27th, the libel articles asserted that, but for petitioner, the beating and death would have never come to light.

Here are a few examples:

> *October 27, 1965:*
> *"His death and the sheriff's department account of the beating were not made public until The Star received a tip to 'investigate the death of a guy named Reagan from the jail.'"* (Pet. Sep. App. p. A 4-5)
>
> *October 28, 1965:*
> *"Both the fact that he had been beaten and that he had died were conveniently ignored by the Sheriff's office. Only after The Star, upon receiving a tip, investigated, were these facts brought to light."* (Pet. Sep. App. p. A 16).
>
> *November 1, 1965:*
> *"The jury has been investigating jail brutality since The Indianapolis Star revealed last week that one inmate, Elmer L. Reagan, who died in Marion County General Hospital of pneumonia caused by a beating, allegedly was attacked by a deputy."* (Pet. Sep. App. p. A 34)
>
> *November 3, 1965:*
> *"Since the investigation started, following a report by The Indianapolis Star on the fatal beating*

of inmate Elmer L. Reagan. 11 former inmates have told of brutality at the jail." (Pet. Sep. App. p. A42)

November 7, 1965:

"But the pitiful—and portentous—death Aug. 7 of the jail inmate, Elmer L. Reagan, 50 years old, was unreported until The Indianapolis Star learned of it five days later. Cause of his death was pneumonia, brought on by the smashing of his ribs." (Pet. Sep. App. p. 61)

November 19, 1965:

"When the Star disclosed Reagan's death, sheriff deputies said Reagan had been beaten by a mental patient, who was later charged with second degree murder. But when The Star learned of Reagan's death, no reports existed regarding Reagan's beating, his hospitalization or his death, and no investigation was in progress." (Pet. Sep. App. p. A. pp. 105, 6)

December 26, 1965:

"The Aug. 7 death of the inmate, Elmer L. Reagan, was first reported by The Star, and a notarized statement made later by another inmate accused a jail deputy of the fatal beating." (Pet. Sep. App. p. A 167)

13. Despite clear evidence petitioner deceives Judge Arterburn.

If it be argued that no reader would understand these articles as stated above, let us note how Indiana Supreme Court Judges Arterburn and Hunter read them:

"The series of publications upon which the complaint is based was brought about when a newspaper reporter (Rick Johnson) in October, 1965 learned that two inmates (Elmer Reagan and Dan[illegible] Crick) had died following beatings in the old Marion County jail the previous July." (First sen-

tence of 2nd paragraph of reversing opinion. Pet. App. p. 2a)

Johnson's testimony that he had read the August 10 Times article, and petitioner's foregoing *later* false publications, were all quoted in Respondent's Indiana Supreme Court "Appellee's Brief," at pages 33-35, and there related to Mr. Johnson's statement that, if McAdams signed the accusation, they could get a new Sheriff, i.e. "kill the son-of-a-bitch politically," if, as petitioner was publishing, "it had been brushed under the rug."

14. Five facts proved McAdams lied: 4 well known to petitioner.

Immediately known facts strongly indicated that the accusation was wholly fabricated. The Reagan portion is quoted in Judge DeBuler's opinion, (P. App. pp. 28a & 29a; in full (R. p. 2595):

1. *McAdams said:* Reagan was housed on the first floor. *(Fact).* He was housed in the basement cage.[1] (R. pp. 4253, 4; 2131, 2; 2366). Now admitted (Pet. p. 6). *Petitioner's knowledge:* It was aware of this before the first recovery publication. (P. Sep. App. p. A66, par. 12-2-7-11).

2. *McAdams said:* That King beat Reagan 3 times on July 14, at 6:30 PM (on the first floor), at 7:30 PM (in the basement) and 1030 PM (again on the first floor). *Fact:* If true, 40 to 100 inmates would have seen, and some 600 would have heard the screams McAdams described. (See

[1] Petitioner now seeks to strengthen its case upon abuse in the use of the basement cage (Pet. p. 6). Reagan was there because elsewhere was visible to female visitors and he'd lay naked and urinate. (R. 4253, 4). Crick was removed to the basement cage for the same reason (R. pp. 2391, 3). Additionally, Reagan would defacate and then rub it on his sores (R. p. 2373). He would be showered and bandaged. Then he would tear off the bandages and rub defacation in his sores (R. 2373, 5), caused from scooting around on the floor.

Jail Drawing (R, p. 2115), and testimony (R. p. 4772, 3). *Petitioner's knowledge:* Petitioner knew this. (R. pp. 5930, 1).

3. *McAdams said:* Reagan was taken to the hospital in the wee dark hours of the morning of July 15th. *Fact:* He registered in the hospital at 5:09 PM, July 14th, in broad daylight (R. pp. 2077 and 6779). *Petitioner's knowledge:* It knew this *prior to the first recovery publication* (Nov. 7th), the City Editor saying (Nov. 6th), "We don't know. Lay it out just as you found it." (R. App. p. 27a-30a)

4. *McAdams said:* King twisted Reagan's arm behind and walked him across the floor, down the stairs, and, later, back, with no mention of any ambulatory difficulty. *Fact:* Reagan claimed he couldn't walk. (R. pp. 2421-7) and did so only once in jail, (staggering, though supported). (R. pp. 2419, 24) and was carried downstairs when transferred to the basement cage (R. p. 4254). Except for that one occasion, every one testified he claimed he couldn't and didn't, walk, and there was corroboration from previous hospital records. (R. App. pp. 30a-32a). *Petitioner's knowledge:* As early as August 12th, petitioner knew Reagan had been to the hospital for "leg injuries" (R. p. 2508 Par. 6) Petitioner's reporter, John Dean, was so informed by Prosecutor Pearcy; also, facts regarding Reagan's rubbing feces into his sores caused from scooting around on the floor (R. App. p. 32a). Additionally, hospital personnel had read Reagan's medical records to Reporter Johnson prior to November 7th (date of the first recovery publication). (R. pp. 7208, 9). These records disclose Reagan had claimed he could hardly walk when he voluntarily sought help from General Hospital, while "filthy and unshaven," on June 3rd, June 17th and June

21st; that City Police took him there on June 26th (immediately following his arrest) and Respondent's office took him on June 28th, and again on July 8th, six days before Brown beat him and he was sent back (July 14th), where he remained, lingered and died on August 7th. *Reagan's average stay at General on these 6 occasions was 1 hour, 57 minutes.* On August 6th, the Neurology Staff wrote a criticism of "Dr. Davis" for not being impressed with Reagan's claims, as the nurses were (R. App. pp. 30a-32a)

5. *McAdams said:* Deputy Grunden followed Sgt. King to the basement. *Fact:* Grunden was not on duty July 14th. (R. pp. 2622 & 3620, 1). *Petitioner's knowledge.*[1]

15. Petitioner's buildup of fear and desperation.

October 27th, Petitioner published that Respondent was "visibly shaken" (P. Sep. App. p. A5; par. 1-14-4-2), a prelude to assertions of fear and concealment of wrongful and desperate future acts. The same day it published flatly it had inmate and deputy eye witnesses to King beating Reagan. It did not. (R. App. pp. 49a-71a)

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[1] This fact was not even realized by Grunden for a week or so after the first publication, when Deputy Moore happened to notice the shift report and recognized its significance, in light of the publications (id). There is no direct evidence petitioner knew this prior to any of the libel articles. Evidence does indicate it was quite unsure, because right after the first libel article, Reporter Johnson called Deputy Finney (claimed at the trial as a "deputy tipster") offering not to print a critical citizen's complaint about him, if he, Finney, would tell him who worked the second shift and the names of some long-time prisoners in BR cell block, where McAdams was on July 14th. Johnson specified no date. Finney agreed and answered as of this late October date. Among others, Finney correctly named Deputy Ping as then being on the second shift (R. App. p. 59a). Ping did not become a deputy until August 1st (R. pp. 2632, 3). Thereafter, Petitioner claimed Ping was "involved or had first hand information" of King beating Reagan. (R. p. 7363, 5)

16. Tipsters; deputies claimed as such; Johnson changes testimony.

In his August 3rd, 1966 deposition, Johnson swore that on October 7th a deputy "tipster" (identified at the trial as Cottey) *merely told him McAdams wanted to talk to him and he (Johnson) only got the impression that McAdams would tell about the King-Reagan beating.* At the trial (June 1967), Johnson swore Cottey did say McAdams would tell him King beat Reagan (R. App. pp. 67a-69a).

All three of the claimed deputy "tipsters" (Robert Atwell, Finney and Cottey) denied they told Johnson what was published. Their testimony is record cited and copiously quoted in Appellee's Indiana Supreme Court Brief, pages 146-192). One merely repeated the rumor Johnson had been spreading since mid-August, when, evidence indicates, a quid pro quo compact was made with Haine (R. App. p. 56a-58a also pp. 69a-71a).

17. McAdams vanishes, headline.

The second publication (October 28th) proclaimed, in an 8-column banner headline, "*BEATING WITNESS VANISHES.*" McAdams had actually gone home to the address in Danville, Illinois that he gave Petitioner in the accusory statement (R. pp. 2953, 5 & 6173). He left right after Johnson counseled him to consult Erbecker regarding reappearing before the Grand Jury.

This article's clear implication was that McAdams had been done in. Reporter Quinn said they so feared, (R. pp. 4627, 8), hence it is a fair inference petitioner intended such public message.

18. Petitioner states alleged meanings editorially and precisely.

Petitioner editorially, in the same issue, made clear its message to the public.[1]

There was no mention of the requested reappearance before the Grand Jury, petitioner steering McAdams to Erbecker and McAdams "Vanishing" to the very address he gave petitioner as his residence.

19. Assistant Publisher's admissions as to meanings, A.M. and P.M.

The Assistant Publisher, E. S. Pulliam, admitted this referred to the Reagan case and charged exactly what Respondent alleged in his complaint. That afternoon, under questioning by his attorney, Mr. Pulliam said that, in the context of all the articles, Respondent was not so charged, even in the foregoing. (R. App. pp. 32a-37a).

20. Peace, if Respondent would accuse King, else Crick is next.

When Petitioner learned of the time discrepancy of Reagan's last hospitalization, Reporter Johnson called on Ed Lewis, a friend of Respondent, and proposed to lay off Respondent if he would, among other things, say he believed McAdams' accusation, else he'd expose another jail murder. Respondent refused. (R. App. pp. 39a-40a).

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[1] *"Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history."* (2-1-7-2) (P. Sep. App. P. A15)

* * * * * *

"Now Sheriff Robert H. Fields says he has obtained a 'repudiation' of the witness' original account of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What would induce the witness to change his story?" (2-1-7-11) (P. Sep. App. p. A17)

Then, on November 11th & 12th, Petitioner published (P. Sep. App. pp. 78-80) an accusation by State Farm convict Neville that he witnessed a deputy viciously beat Crick, who was carried out apparently dead (R. pp. 6911, 13). Reagan wasn't mentioned on November 11th, and only once on November 12th, but on these days Petitioner resumed its defense of Haine.

21. Crick accusation fails; back to Reagan.

Jail, City Police and hospital records immediately disclosed that Neville and Crick were never in jail at the same time.

Respondent's attorney wrote a statement citing all these records. It was published in the third issue of a weekly, which started right after the Times folded (R. p. 5369). Counsel then caused it to be mailed (certified) to Petitioner from Fowler, Indiana (R. pp. 6497, 8). Reporter Donohue also took a copy of Editor Connor (R. pp. 4513, 4), who already had a copy (R. p. 4515) and Donohue checked the cited records, finding them accurate (R. p. 4507).

Petitioner never retracted (R. App. p. 40a-41a). It simply reverted to Reagan as the chief accusation, carrying Crick merely as a case of neglect thereafter (articles from November 13th on) (P. Sep. App. pp. A 88-A 171).

22. Petitioner advertises protection for "come-forth" witnesses.

October 30th and November 2nd, Petitioner began, in 8-column banner headlines, to state that Judge Fife had forbidden Respondent to question witnesses (R. pp. 51 & 55). Within a week Petitioner interviewed 16 "come forths" and afterwards it had no more although it published its charges for 28 more days, continuously, plus 8 more scat-

tered days until Dec. 28th. In every case where a real incident was referred to it was identified and evidence of what really occurred was admitted over Petitioner's "hearsay" objections. None of this evidence was ever, in any respect contradicted. Even where the incident was fabricated Petitioner objected to additional evidence corroborating the fact that it was so fabricated. For example, one of the come forths (Neville), who made the Crick accusation, said a deputy broke his nose (R. p. 55). Petitioner objected (as hearsay) to the testimony of the irate father who broke Neville's nose (R. pp. 6152, 8) between his frequent stays in jail (R. pp. 5347-6361),[1]

23. Connor, editor, "We were publishing brutality, not non-brutality," and so Petitioner changed statement of an honest reporter.

Two other "come forths," Hembree (in jail twice) and Roberts (6 or 7 times) during Respondent's two-year incumbency, told Reporter Donohue that they saw no brutality. Donohue included these statements in his manuscript. His superiors removed all of it from the publications (R. App. pp. 41a-44a).

24. Grand Jury, "Whitewash" and death threats; photos on page 1.

The Grand Jury heard 129 witnesses (everyone suggested by Petitioner). It found McAdams' statement utterly false and, had he sworn to it, would have indicted him for perjury (R. p. 5747, par. 5). Petitioner published the Grand Jury Report (id) as a sub-story (November 24), to

[1] The statements of these come forths are in the Record at pages (4197) (4206, 7) (4216) (4242) (4248) (4441, 2, 3, 4, 5, & 6) (4660) (5343) (5385) (5398) and (5400).

the lead story, calling the report a "whitewash" in an 8-column banner headline. (R. p. 82). Reporter Johnson had called the report a "whitewash" (R. pp. 3575, 6), then went in and saw Judge Fife and Petitioner then published (8-column banner headline) that Judge Fife called it a "whitewash" (R. p. 82) (R. App. pp. 44a-48a) Judge Fife's bailiff (Patterson) said Johnson told Judge Fife it was a "whitewash" (R. pp. 6719, 20). Judge Fife had reasons to be pliable (R. App. p. 44a-48a).

With the "whitewash" headline, Petitioner published that criticism of the report was mounting (R. p. 82, par. 29-1-5-1) and published the names and addresses of the jurors (p. 8., par. 29-12-3-4). In the next issue (November 25th), Petitioner published the jurors were under threats of death and residence arson and had asked to resign. Petitioner added, on page one, their names and photographs (R. p. 84).[1]

Judge DeBruler (with J. Jackson) said "*It is impossible to understand the devastating nature of this attack without reading the actual exhibits.*" With headlines, they are all collected together at pages 43 through 100 of the Record, as Complaint Exhibits, admitted by the Answer.

25. Petitioner tells public Respondent won't talk; a falsehood.

Each time a "come forth" gave a statement, Petitioner published the accusation under an 8-column headline. November 3rd (the 8th day and the day of the 8th publication of libel), Petitioner published:

[1] Previously Petitioner had published a cartoon depicting the Grand Jury in a flood light under the caption "NO BLACKOUT HERE" (R. p. 5453). This was November 14th. November 2nd Reporter Johnson had planned to interview the Jurors in their homes, until warned by Deputy Prosecutor Bath (R. pp. 4004, 5).

> *"The Star agrees that the police and sheriff's departments have 'their rights' and in reporting complaints about brutality at the Marion County Jail has in all its stories asked Sheriff Robert H. Fields for comment prior to publication." (R. p. 6383).*

This was an untruth, supported by no evidence, and categorically refuted by Respondent's uncontradicted testimony. (R. pp. 6383, 5.) Neither does the text of any of 44 publications indicate any effort to ask Respondent, or any of his deputies, who were allegedly involved, to comment.

26. Petitioner refuses Respondent's offer of clear evidence of falsity.

Respondent's statutory notice of retraction, required by Indiana law (before suing), added this offer:

> *"If, for any reason, this notice is not clear you, or someone on your behalf, may seek clarification, which will be cheerfully furnished."* (R. p. 101).

Petitioner made no response and, after 5 days, the action was filed on January 10, 1966.

On March 13, 1966, Petitioner published its boast that it had succeeded in its original threat. (R. p. 4153.)

27. The old jail conditions and Respondent's care of inmates.

Into the libel articles, Petitioner interlarded accusations of neglect. One quoted source was the Coroner, Dr. Robert Collins (P. Sep. App. pp. A 78; A 83). Petitioner never disclosed that Dr. Collins was the doctor General Hospital had assigned to the jail prior to January 1, 1965 (R. p. 2363, 4). Respondent had to rely on General Hospital,

having no budget for medical care (R. pp. 6345, 6). Prior to these articles, Respondent had complained (in writing) to General Hospital about the poor care of inmates, and specifically complained of Dr. Collins' neglect and excessive prescription of drugs. Evidence of this was offered, to which Petitioner objected as hearsay (R. pp. 6342, 3).

The new Jail was occupied during September 1965. The old Jail was overcrowded many-folded (R. pp. 5147 & 7043). Lack of individual cells precluded separation for maximum safety (R. pp. 2115, 9). The steel was rusting out; concrete was crumbling and every Grand Jury for 25 years had "decried" its condition (R. p. 6352). Within 3 months after Respondent became Sheriff, he caused corridors to be converted into additional cell blocks and, for the first time in 25 years, every prisoner had a bunk to sleep on (R. p. 2108, 11). Those in the basement cage (used mostly for holding "book-in" lines) had mattresses to sleep on (R. p. 2127). There was agreement that the old jail was unfit for human occupancy, without the false exaggeration by which Petitioner sought to obscure the real thrust of this case. (Petition p. 6).

To this jail were sent stretcher cases, once in a grocery cart (R. pp. 4556 & 4744). A former Sheriff once announced, law or not, he'd refuse to accept mental cases. After that, police usually charged the mentally suspected with disorderly conduct (R. pp. 4557, 8).

In insanity proceedings, the Sheriff was ordered to hold the subject until a hospital bed was available (R. pp. 5786, 8).

28. Petitioner's misstatement of the crux of this case.

The 20 lines with which Petitioner purported to introduce this Court to the facts referred to bad physical con-

ditions in the old jail, which Respondent condemned and did all within his power to correct and which no longer existed, the new jail then being in use. The 20 lines also fostered the belief that many "inmates and former inmates" said deputies beat both Crick and Reagan.

> "... *accusations by other inmates and former inmates that deputy sheriffs had been responsible for these beatings (Reagan & Crick), as well as numerous others....*" (Petition p. 6).

None but McAdams and Neville so said.

Besides McAdams and Neville, there were 15 "come forths." Their statements were constantly used to bolster the McAdams accusation. See, especially, the first recovery publication (No. 12: Nov. 7th) (R. p. 62, 3) as well as the headlined falsehood that Brown was shackled at the time he stomped Reagan, not during the heat of the fray. (Id).

Respondent identified each incident, where details permitted, and offered proof of what did, and did not, occur. It was to this evidence that Petitioner refers as hearsay.

(E)

ARGUMENT
AS TO SPECIFIC QUESTIONS RAISED.

1 Sufficiency of Evidence as to: (a) Meaning.

1. Admissions as to meaning.

On his deposition, one morning, Assistant Publisher E. S. Pulliam admitted that some of the early publications directly accused Respondent precisely, as alleged. He did so in spite of his lawyer's contrary suggestion (not even camouflaged as an objection) that the accusation was only

against the Sheriff's Department (R. App. pp. 32a to 36a Esp. 35a).

2. Pulliam changes, adopts "cumulative meaning."

That afternoon he adopted the morning suggestion, asserting that all the publications should be read together (R. App. pp. 36a-39a). Thusly Petitioner embraced Respondent's theory of "cumulative meaning" (Complaint's common Rhetorical Paragraphs 12 (P. Sep. App. pp. A 175-6).

But. Petitioner adopts "cumulative meaning" only for the purposes of its objections, and not for determining meaning.

3. Building of Code phrases.

Respondent's appendix discloses, how, in a panaramic view, the build-up of code words and phrases was designed to continue to assert the accusation in shorter terms (R. App. pp. 12a-25a). The emphasis was always on concealment, fear of witnesses (See R. p. 63; par. 12-2-14) and the necessity of calling in the "F.B.I." (R. pp. 82, 83; pars. 29-12-4-6, 7 & 8), and that the prosecutor was protecting Respondent. Throughout its publications and these proceedings Petitioner conveyed the message that respondent had something to fear, but it offered no such evidence.

Only a reading of the headlines and articles can afford an insight into the saturation level by which the code words and phrases were drilled into the public mind (R. pp. 43-100). For the word "whitewash," see (R. App. pp. 44a-48a). This was the accusation that the Prosecutor was whitewashing Respondent. But Petitioner admitted it knew of no special friendship between either and King (R. p. 3975).

The strongest indication of whom Petitioner intended to accuse was failure to even disclose that Sgt. King was the one accused of the murder. If it believed McAdams, it would have been privileged to name him. It did not dare. It knew the truth. It was Respondent, not King, whom Petitioner had threatened to destroy.

In its Indiana Supreme Court Brief (p. 15), Petitioner specifically waived its alleged error in the refusal of its tendered Instruction No. 14 (R. p. 7600), to the effect that there was insufficient evidence to prove Respondent was accused of intimidating McAdams.

Petitioner attempts to exhibit to this court a deceptively mild tenor by printing only Complaint Exhibit 40 (the last of the recovery publications) in its Brief, proper (p. 11). Only an examination of the whole series, with headlines, can afford an understanding of the recovery publications (12, 14, 18, 20, 37 and 40). The headlines, so obobscure in the reprint, can be seen in (R. p. 43 to 100).

Respondent's name need not appear in the article if there be proof it accused him. *(Rosenblatt v. Baer (1966) 383 U.S. 75, 88; 15 L.ed (2d) 597, 606)*. In *Baer* there was but a single publication.

Previous and later publications made clear the continuing accusation against Respondent.

For an analysis of how frequently Respondent had been accused by name, see Judge DeBruler's opinion (P. App. pp. 26a-27a). See, also (R. App. pp. 12a-25a-excerpts).

The *Baer* decision notes that the article consists of *criticism*, of governmental management, albeit susceptible of imputing "peculation."

In this case raw, universally condemned crimes were charged, the *criticism* of which is universally shared.

We submit there is a clear distinction between *criticism* and the *assertions* upon which it is based. We submit the former is never libelous, the latter being the only basis for a defamation action. Respondent's action is not based upon Petitioner's criticism of murder, *but* its assertions he aided and abetted murder by tampering with a witness, and maliciously prosecuting an innocent man.

4. Verdicts, the logic of.

The jury's reasons for finding, for Respondent, on the 6 paragraphs are unknown. But there are reasons. The first, No. 12 (Nov. 7), came following City Editor Connor's "we don't know" statement. The second was on No. 14 (Nov. 9). There Petitioner proclaimed in an 8-column headline—"4th PERSON TOLD OF BEATING INCIDENT." This was Hester saying McAdams told him King beat Reagan. Hester was right there in jail with McAdams on July 14 and would have seen, or at least heard, if it had happened (R. p. 4248), and Petitioner knew it (id). The same applies to other ex-inmates in jail on July 14th, who gave statements to Petitioner, saw (and distorted) other incidents, but weren't asked and said naught of King-Reagan (R. pp. 4303, 9), and Petitioner knew this regarding at least two, besides Hester: (R. pp. 4206) Daniels; and 4246 (Ritzert).

The next 2 recovery publications (Nos. 18 & 20) (R. pp. 71 and 73) followed Petitioner's attempt to coerce Respondent into falsely accusing King and its futile effort to substitute Crick's "murder" for Reagan's.[1]

The final 2 recovery publications (No. 37, Dec. 3rd; R. p. 93) and (No. 40, Dec. 18th; R. p. 96) came following

[1] Also see (R. p. 2297, 99) then R. p. 55, par. 7-10-4-1;) also, (R. pp. 4038, 41, then 5371 (2 pages), then R. pp. 68 and 69), which disclose the fraudulent manner in which both of Neville's accusations (including Crick) were obtained.

the Grand Jury Report on Nov. 23rd (R. p. 5747). The savagery of the attack from this point merged in the final recovery publications.

That the parties expected verdicts upon other paragraphs does not divest the jury of its responsibility and authority to make the findings it believed warranted from all the evidence. (See J. DeBruler's Opinion, P. App. pp. 44a to 46a)

5. Petitioner conceded validity of "Cumulative Meaning" in Trial Court

In the Trial Court petitioner filed no demurrer or other challenge to the complaint *nor to any paragraph thereof.* In its brief supporting its Motion for Summary Judgment it informed the court:

> "These examples are not offered as a substitute for a construction of *all* the publications *in context.* Plaintiff alleges in each rhetorical paragraph 12 of each paragraph of complaint that the publications must be so construed, and for the purpose of this motion defendants agree" (R.p. 452k) (Emphasis by Petitioner)

Nor could anyone endowed with even a moderate sense of logic and fairness disagree. It would have been more logical to have filed one paragraph of complaint on the whole series, but Indiana law did not permit one to do so. *(Barker v Prizer (1897) 150 Ind. 4 at pp. 10 & 11)*

(1) Sufficiency of evidence (con't.) as to:

(b) Knowledge, reckless disregard, etc.[1]

(1) Absolute absence of probative evidence supporting the accusation.

There was never any basis for the accusations except

[1] Since it is interrelated, Respondent will here discuss "The Clear and Convincing Evidence" question presented (Pet. p. 5).

for McAdams' accusatory statement. Petitioner's knowledge, etc., must be measured as of Nov. 6th, the day preceding the first recovery publication on Nov. 7, although most of its knowledge pre-dated the first publication, Oct. 27.

(2) An inventory of Petitioner's pre-publication knowledge, 15 specific plus 5 general items of evidence, of which Petitioner had knowledge.

(1) Trusty "eye witnesses" saw Brown attack Reagan; called 3 deputies, who ran and shackled Brown in the heat of the fray. Petitioner knew this, generally, as early as Aug. 14th (R. p. 2541), and the details before the first recovery publication (R. pp. 7373, 5). Petitioner claims it got the "*anonymous*" tip that King beat Reagan (R. p. 44, par. 1-1-7-5) but, in the intervening 2½ months, made no effort to interview these witnesses, almost completely ignoring, and always denigrating, this evidence in any passing reference. Yet it proclaimed to the public, in headlines, that "STAR REPORTER DIGS 11 WEEKS TO GET FACTS" (R. p. 6706). In the article it proclaimed that Deputies gave it facts. The only evidence of this assertion was Johnson's trial testimony, which he admitted contradicted his earlier deposition. (R. App. pp. 67a-69a)

(2) Reputable witnesses (R. pp. 3316, 24 (and even Haine, himself, at first) said the Reagan case was assigned to Haine on July 14th, (and Johnson knew it; R. p. 7148, 9) explaining the delay in investigation from July 14th to August 11th, and Petitioner knew Reagan was not in custody at death (R. p. 2508-par. 5A)

(3) That on an anonymous tip (if indeed there was any) Johnson circulated the accusation from Aug. 14th until McAdams made the accusation Oct. 22nd. (R. App.

pp. 69a-71a) The "anonymous tip" underwent some metamorphosis in Editor Connor's rewrite, and still more at the trial (R. App. pp. 49a-58a)

(4) That Respondent was a reputable and honorable man and there was no reason to suspect he would "countenance anything evil or murder or brutality." (R. p. 5474, 5).

(5) That Respondent had no reason to protect Sgt. King any more than Sgt. Haine, whom he had just vigorously prosecuted (R. p. 5975).

(6) It knew it virtually threatened to "involve Prosecutor Pearcy if he didn't go along" (R. pp. 3960, 63) at a time when it obviously gave a bad address for McAdams while trying to get McAdams' unsworn statement to the Grand Jury (R. pp. 3999, 4000), which statement recited that it was sworn (R. p. 5747, par. 5).

(7) That whatever Deputy Cottey told Johnson about McAdams wanting to talk to Johnson, it only gave Johnson "the impression" it was about King-Reagan; so Johnson swore when deposed Aug. 3, 1966. But in June, 1967, after the so-called deputy tipsters had denied the truth of the publication (R. App. 61a-66a) Johnson changed his testimony to say that Cottey did say McAdams wanted to tell him King beat Reagan (R. App. pp. 67a-69a).

(8) That there were obvious reasons to doubt the veracity of McAdams because:

(a) He was a confirmed criminal;

(b) He successfully bargained his accusation for his release from 4 months in jail;

(c) He was encouraged to think he was aligned with a powerful Judge and newspaper in an effort to get

rid of Respondent as Sheriff (R. App. pp. 9a-12a), rather heady wine for a petty criminal.

(9) That what McAdams described would have been heard by some 600, and seen by 40 to 100, inmates, yet it included no names of witnesses in the accusatory statement.[1]

(10) That McAdams said Reagan was housed on the first floor, whereas Petitioner had known since November 6th that he was housed in the basement; that Brown was not shackled, as the headline (R. p. 62) proclaimed he was at the time he kicked and stomped Reagan, but was shackled in the heat of the fray. (R. p. 62, pars. 7-2-7-11,12).

(11) That McAdams said Reagan was walked across the floor, down the stairs and back. From no later than Nov. 6th, Petitioner knew Reagan had trouble walking, in fact, claimed he couldn't walk, and had been hospitalized for that problem. McAdams said nothing of Reagan staggering or claiming he couldn't walk as King walked him, with his arm twisted behind him. (R. App. pp. 27a-32a)

(12) McAdams said Reagan was taken to the hospital in the wee, dark hours of the morning, whereas he was taken at 4:55 P.M., arriving in broad daylight at 5:09 P.M. Petitioner knew this no later than Nov. 6th. (R. App. 27a-29a).

(13) That on Aug. 26, 1965 McAdams asked to serve his 6-months' theft sentence in jail rather than on the State Farm, after first being sentenced to the State Farm. This was published in The Star, though City Editor Connor said it was later that it was brought to his attention (R. p.

[1] It headlined so-called "McAdams told me the same story" ex-inmate witnesses. One (Hester) was in the same area with McAdams. Petitioner interviewed others who were in the jail on July 14th. Petitioner asked none if they had seen or heard what McAdams described.

5946). On Oct. 22 McAdams said he saw a deputy murder a man on July 14, petitioner publishing on Oct. 27th:

> *"I've been in and out of that jail a lot of times. It might have been me that got beaten to death."* (R. p. 43, par. 1-14-4-4).[1]

(14) That Reporter Johnson tried to blackmail Deputy Finney into serving as a tipster after publication of the Oct. 27th article, purporting to quote a deputy tipster who, at the trial, Johnson identified as Finney. (R. App. pp. 58a-61a).

(15) Petitioner knew, by admission of its Assistant Publisher, that early publications had accused Respondent, as alleged (R. App. pp. 32a-36a); and yet Nov. 8th, before the 31 last publications, including 5 recovery publications, it refused to consider a requested retraction delivered in cordial manner by Respondent, in person, to the Assistant Publisher, in person (R. pp. 6385, 7).

Into these 15 categories falls virtually all the evidence offered upon the issue of falsity. Petitioner knew of most of it before the first publication and all of it before the first recovery publication.

Eight days after the last libel publication, Respondent offered Petitioner any clarification it, or anyone on its behalf, would ask. (R. p. 101; quoted in P. Sep. App. (as a footnote), p. A 174). The offer was ignored. (R. pp. 5505, 7)

Petitioner also knew these additional general facts:

(1) McAdams' accusatory statement was the solitary foundation for Petitioner's accusations.

(2) McAdams retracted it to Respondent, and Petitioner knew this, prior to the publication of 43 of the 44

[1] Petitioner objected (as hearsay) to the record of McAdams' Aug. 26th request that he serve in jail (R. pp. 5794-5796, p. 12).

publications in question, including all 6 recovery publications. (R. p. 45, par. 2-1-5-6, P. Sep. App. p. A8).

(3) McAdams retracted it in open court, and Petitioner knew this before the publication of 42 of them, including the 6 recovery publications. (R. p. 49, par. 3-1-7-5; P. Sep. App. P. A 20).

(4) McAdams retracted it before the Grand Jury, and Petitioner knew this before publication of 15 of them, including the last two recovery publications. (R. p. 5747, par. below No. 4).

(5) McAdams was not a reliable witness, on his face, and became wholly incredible in the face of the indisputable physical circumstances to say naught of the three deputies who shackled Brown in the heat of the fray.

Alone, McAdams' criminal record was a potent warning of his probable falsity *(Curtis Pub. Co. v. Butts (1967) 388 U.S. 130, 158; 18 L.Ed. (2d) 1094, 1112).*

(3) Good faith, Johnson proclaims his.

Yet, it rested its case on lack of sufficient knowledge to warrant a finding of reckless disregard of falsity[1] or a high degree of awareness of probable falsity[2] upon Reporter Johnson's last answer on direct examination:

> *"Q. Now in the publication you now referred to, and to any other publications which are exhibits to this complaint, Mr. Johnson, did you write anything in any one of those articles, which you knew at the time was false, or which you were aware at that time, was probably false?*

[1] N. Y. Times v Sullivan (1964) 376 U.S. 254; 11 L.ed (2nd) 686
[2] Garrison v Louisiana (1964) 379 U.S. 64; 13 L.ed (2nd) 125

"A. Mr. Scanlon, I did not. Anybody that knows me know I would not." (R.p. pp. 7195, 6)

His immediate cross-examination, as narrated by Petitioner, is at R. App. pp. 87a-30a. On further cross, he admitted he had changed his Aug. 3, 1966 deposition as to what his "tipsters" said. (R. App. pp. 67a-69a).

(4) Tipsters, motion to suppress argument.

The basis of Mr. Johnson's faith was "tipsters," especially "deputy tipsters," whom Petitioner refused to identify. It filed its *pre-trial motion* for an order precluding Respondent from "arguing or commenting" upon any inference from Petitioner's refusal to disclose its source of information (R. p. 574), *stating it had, and would, refuse to so disclose at the trial.* It specified arguments which Respondent should be forbidden to make: (1) that Petitioner had no information but had fabricated the accusations; (2) that its refusal to identify its sources of such information was because such sources were unreliable, and (3) that their publications differed from the information given by the tipsters.

The Court sustained this motion, adding that Respondent was not precluded from offering evidence to prove the foregoing points (R. p. 656).

Petitioner had refused to identify its "tipsters." Respondent acquiesced in the refusal and deposed all jail deputies. Only at the trial did Petitioner identify its claimed tipsters. It boasted in the Indiana Supreme Court that it thusly surprised Respondent. But in so saying, *it convicted itself of a crass and indisputable attempt to deceive the jury.* (R. App. pp. 50a-52a).

For the record substance of the deputy tipsters, see (R. App. pp. 49a-71a). A fuller account, with more copious

quotes is gathered at pp. 146-192 in Respondent's Appellee Brief in the Indiana Supreme Court.

(5) The testimony of none of them sustained the publications.

March 6th, 1967 the foregoing motion to suppress was filed (R. pp. 573, 4).

March 10th, 1967 Petitioner took a statement from Deputy Finney, whom it, at the trial, for the first time, claimed as a tipster (R. pp. 3707, 4 pages).

March 13th, 1967, it took a statement from Sgt. Robert Atwell, whom it, at the trial, claimed as a tipster (R. pp. 4169, 3 pages). Atwell was the anonymous one.

Finney, when deposed, in late 1966, swore he had never had a conversation with Johnson, and Petitioner asked no questions on cross (R. pp. 3756, 7). The substance of his testimony is in the Appendix (R. App. pp. 58a-61a).

The other claimed "deputy tipster," *Cottey*, was deposed about the same time as Finney. His total testimony is in the Appendix (R. App. pp. 61a-66a).

Atwell was not deposed because he was not a jail deputy (R. p. 4155), as Johnson had said two of his deputy tipsters were (R. p. 3552). The third tipster was listed first as anonymous, later as "a man" and, at the trial as Atwell. (For substance of his testimony, see R. App. pp. 56a-58a).

This Court stated in *St. Amant*[1] that professions of good faith would avail little where the story was self-fabricated; or based wholly upon unverified anonymous telephone calls, or where the publication is so inherently improbable that only a reckless man would circulate it, or where there were obvious reasons to doubt the informants' veracity or accuracy.

[1] St. Amant v Thompson (1968) 390 US 727; 20 L.ed (2nd) 262.

Every element for doubt is shown here. We submit this is clear and convincing evidence of knowledge or reckless disregard, etc.

(6) The only question presented for review.

Can the defendant, represented by able counsel throughout these proceedings, fail to ask a "clear and convincing" instruction; fail to present the question on appeal (which Petitioner admits, see P. Sep. App. A 241, A 242), and then ask this court to, in effect, give it a new trial, in the face of the foregoing? That is the question. We think it does not warrant certiorari.

Of course, this litigation has been expensive to Petitioner, as it noted (Pet. p. 27). It has not been cheap for Respondent. Nor will it be cheaper if retried, and taken again through the appellate procedures. But the ultimate answer to Petitioner is: Had you accepted Respondent's January 6, 1966 offer to show you all this evidence that he was wrongfully accused and made an honest and forthright retraction, all parties would have been better off and (1) you probably would not have been sued, or (2) if you had, you probably would have won or (3) at worst, under the law of Indiana only nominal damages could have been recovered. *White v. Sun. Pub. Co. (1904) 164 Ind. 426 at 428, 30.*

Reduced to its common denominator, the principal stakes in this litigation are Petitioner's ego and Respondent's reputation, with money a symbolic consideration, albeit quite important, to one of ordinary means who has incurred the obvious expense here indicated.

Petitioner had as fair a trial as imperfect human beings can attain. That is as good as any mortal gets in terrestrial courts and better than is normally available to ordinary mortals.

(7) "Clear and convincing" argument waived.

Petitioner waived argument before the jury (R. p. 712) which it urges upon this court in requesting that the *Seventh Amendment to the Constitution of the United States* be ignored. The *7th Amendment* is a valuable provision to the Bill of Rights and should not be overlooked in balancing the rights of litigants.

More important is the ruling in *Curtis Pub. Co. v. Butts (1967), 388 U.S. 130, 146; 18 L.ed (2d) 1094, 1105* that where a right is clear, it may be waived. Petitioner's conduct of the trial, and subsequent appellate procedure, conclusively shows its familiarity with *"Times and its progeny."* One would be warranted in believing Petitioner hoped to preserve this as a last ditch question, procuring a new trial and thus, by sheer weight of litigation expense, finally exhaust Respondent.

2(a) The Hearsay Question.

(1) Falsity, separate issue, agreed.

The parties were agreed that falsity and knowledge, etc., thereof, were separate elements and that Respondent had the burden of proving both. However, from *"Times"* and its progeny, Petitioner winnowed a holding that any evidence of the falsity of its publications, absent proof of its pre-publication knowledge, etc., was hearsay, regardless of its being otherwise competent.

The most pertinent example of such was evidence of what was said and done regarding McAdams the evening of October 26th, on the very occasion Respondent was accused of intimidating McAdams. Rulings on such objections to truth-evidence regarding separate accusations are moot, since the jury found for petitioner upon all except the King-Reagan case. (See J. DeBruler's Opinion, P. App. pp. 54a & 63a).

Every objection Petitioner denounces as "hearsay" was otherwise competent, except for this contention. Respondent had identified every published incident, and produced evidence of the falsity or distortion thereof *without contradiction in a single case.* The incidence of this class of evidence was governed by the multiple accusations, as was the enormity of the record, swollen greatly by Petitioner's repetitious objections and arguments thereon, as well as the length of this brief.

(2) Court's instruction regarding falsity evidence as it relates to knowledge, etc.

The Court admitted such evidence under Respondent's tendered Instruction No. 6, given as the Court's No. 28, as follows:

> "Plaintiff has the burden of proving:.....
>
> Second: That the accusations were false.
>
> Third: That defendant knew said accusations were false or published them with a reckless disregard of truth.
>
> "In resolving the last two issues the evidence tending to prove falsity may not necessarily tend to prove knowledge or reckless disregard. Only that evidence tending to prove falsity of which defendant was aware should be considered upon the issue of defendant's knowledge of falsity or reckless disregard of truth." (P. Sep. App. pp. A 219, A 220).

By successfully tendering its instructions, Petitioner conceded Respondent was required to prove falsity, as an element, apart, from knowledge or recklessness, etc.

(3) Petitioner's tendered instructions, given, that falsity is separate issue.

COURT'S INSTRUCTION No. 17 (DEFENDANT'S TENDERED INSTRUCTION No. 1)

"It is the law, and I so instruct you, that every citizen, including a newspaper publisher, has a qualified privilege, conferred by the Constitution, to discuss and criticize the official conduct of public officials. This is a fundamental right of citizenship in a democracy, which is possessed by all citizens alike and which may be exercised with respect to any public official, including a county sheriff or any deputy sheriff.

"The citizen's privilege to discuss and criticize the official conduct of public officials is *not limited merely to statements which are true*. Such privilege also includes the right to make false and defamatory statements about the official conduct of pubile officials, so long as the citizen, at the time he makes such statement, does not make them with actual malice, that is, with knowledge that they are false or with reckless disregard of whether they are false or not.

"You are instructed that each and every one of the newspaper articles and editorials attached to the complaint in this action, in so far as they pertain to plaintiff at all, do so only with respect to his official conduct as sheriff of Marion County and thus as a matter of law are qualifiedly privileged publications under the Constitution. Therefore, before plaintiff can recover damages in this action for any of such articles and editorials, on the ground that they impliedly accused him with having committed one or more of the alleged crimes, he must first prove as to such article or editorial *each of the following:*

"1. That it accused him personally with having committed one or more of the alleged crimes;

"2. *That said accusation as well as the statement or statements giving rise thereto were false; and*

"3. *That said accusations as well as the statement or statements giving rise thereto were published by defendants with actual malice, that is, with knowledge that they were false or with reckless disregard of whether they were false or not.*

"*If, with respect to any article or editorial attached to plaintiff's complaint, you find from all the evidence that plaintiff has failed to prove any one of these elements, then I instruct you that plaintiff cannot in this action recover damages as to that article or editorial.*" (Emphasis added) (P. Sep. App. pp. A 211, 212)

COURT'S INSTRUCTION NO. 25 (DEFENDANT'S TENDERED INSTRUCTION NO. 5)

"To sustain his burden of proving falsity, plaintiff must not only prove the falsity of any implied accusation of crime made against him, *but he must also prove the falsity of the statement or statements in the publication which gave rise to said implied accusation.*" (Emphasis added) (P. Sep. App. p. A 217)

(4) Seven correct instructions given upon the question of knowledge etc.

The jury was not misled regarding separate proof of knowledge, etc. Judge Barger so instructed the jury 5 times before No. 28 and once thereafter. (No. 17; P. Sep. App. pp. A 211, A212); (No. 18; P. Sep. App. pp. A 212, A 213); (No. 20; P. Sep. App. pp. A 213, A 214); (No. 26; P. Sep. App. pp. A 218); (No. 27; P. Sep. App. p. A 219); *(No. 28; P. Sep. App. pp. A 219; A 220);* (No. 29; P. Sep. App. p. A 221).

The verdicts show the jury took these instructions quite seriously. *First:* the jury declined to impute Reporter Johnson's earlier knowledge to Petitioner, finding for Respondent only after the telling discrepancy (as to the hour Reagan was hospitalized), was brought to Editor Connor's attention and he said, "We don't know. Lay it out as you found it" (Paragraph Twelve, November 7), and thereafter continuing the accusations in Petitioner's code words, phrases and paragraphs. (R. App. pp. 12a-25a; 27a-29a).

Second: Although uncontradicted evidence showed other accusations false (e.g.) Neville, the jury found for Petitioner upon all the other alleged libels. On these Respondent relied largely upon reckless disregard rather than knowledge.

Under Indiana law, truth is a defense, *(Indiana Constitution, Art. 1 Sections 9 & 10)* and proof of knowledge, etc. has been essential in privileged cases since 1899, at least. *(Henry v. Moberly (1899) 23 Ind. App. 305, at 316, 7).*

Petitioner's rights were not only correctly, but quite effectively protected, under both the State and Federal law.

It is Petitioner's misconception of its rights which leads to this contention. Here are two examples:

(5) The Mellene accusation, the truth of which is called hearsay.

The Mellene Accusation: Sgt. James Mellene had investigated King-Reagan following Haine's failure. He testified May 12, 1967 (R. p. 4313). Sgt. Brown testified May 15th (R. p. 4541). Neither was asked anything regarding the Sheats-Coroder case. Cross-examining Respondent on June 1st, Petitioner asked if Mellene hadn't been "taking money from prisoners" and produced a memorandum by Sgt. Brown from the Sheats-Coroder file, saying, to hold these

prisoners' money because Sgt. Mellene had asked for it (R. pp. 6570, 4). Respondent knew nothing of the incident (id).

On June 6th Sgt. Brown returned with the entire Sheats-Coroder file. It contained receipts showing that Mellene had obtained the money ($114.27) (and other personal property) and, *dated the same day, the receipt therefor from the Property Room Officer of the Indianapolis Police Department.* Mellene had arrested these men, in the act of burglary, within the city limits. By longstanding agreement, it was a City Police case, hence the "loot" was properly placed in the hands of that department (R. pp. 6960, 2; 6981 to 7014). This particular receipt is at page 7013.

Petitioner objected to these other papers in the file from which it had extracted that one memorandum, "*on the ground that they are hearsay . . . for the reason that the defendants have had no knowledge of these. . . .*" (R. pp. 6960, 1). The court overruled, and this was "hearsay" objection New Trial Ground 7ss (R. p. 1940).

(6) Cottey, the knowledgeable tipster. His statement and deposition.

The Cottey Statement and Deposition: Petitioner constantly published there was a failure to investigate, and it claimed Cottey had information regarding King-Reagan (R. p. 7163). Cottey was on vacation Oct. 27th and, upon return, was ill. When sufficiently recovered, his statement was taken (R. p. 6303) on Dec. 20th (R. p. 6306). This was prior to the last 4 libel publications (R. pp. 97-100). His statement was offered and received as evidence that Respondent did investigate, seeking information from Cottey, whom Petitioner claimed had information. Petitioner objected to it as hearsay (R. pp. 6303, 5).

It was admissible as a verbal act. (Judge DeBruler's opinion, with authorities); (P. App. pp. 54a to 63a).

Cottey's testimony was his in deposition, taken by Respondent. Petitioner assigns error because the Court permitted Respondent to read his direct-examination of Cottey's deposition (R. pp. 6818, 21; R. App. p. 62a-63a) because he was alive and available (which he was), and Indiana law did not permit the use of depositions in such cases (which was correct). However, Indiana law did so permit where the other side had read part of a deposition, *which Petitioner had done* (R. pp. 6639, 43; R. App. pp. 62a-66a). *This Petitioner failed to point out, so Judge Arterburn missed the point* (P. App. pp. 13a-15a). Judge DeBruler points out the facts, holding it was not error since Petitioner "opened the door" (P. App. 54a).

(7) Objections, 75, nature not developed.

Petitioner lists, without discussion, record pages of 75 alleged hearsays (P. Sep. App. pp. 198-202). In the Indiana Supreme Court it listed 100 and selected 11 (one of which the trial court had sustained) for discussion (Appellant's Brief, pp. 119-156). Respondent answered these objections (Appellee's Brief, pp. 272-288) and Judge DeBruler deals with them (P. App. pp. 54a-63a). Only 15 of the 100 listed pertained to Reagan, upon which Respondent recovered. So if all 15 are among the 75 listed here, 60 of them are moot, because the jury found for Petitioner on all accusations where Respondent relied upon recklessness rather than knowledge, that is the King-Reagan accusation. But every one of the 100 complaints was against otherwise competent evidence tending to disprove a fabrication, or the truth regarding some distorted incident.

(8) Petitioner's position on hearsay.

Petitioner's position is that it can banner-headline the accusations of a known criminal, (as all of its and Erbecker's clients were), that one of good repute committed a crime. But that the accused may not produce witnesses, who were present at the time and place of the fabricated, or distorted incident, to prove what did not, or did occur. Petitioner denounces this as hearsay. As Judge DeBruler stated, after discussion (P. App. pp. 54a-63a) of the facts and the law:

> *"It is not even an exception to the hearsay rule, which would imply it was hearsay. It is not hearsay at all."* (P. App. 57a).

Petitioner's contentions do not warrant review.

2(b) Admissibility of Threats.

(1) Ill will, motion to suppress any reference to.

Petitioner filed a pre-trial motion to declare inadmissible "evidence tending to show" Petitioner published "out of hatred or hostility" toward Respondent (R. pp. 578, 80), which was overruled (R. p. 658).

(2) Court's instruction on ill will.

Petitioner's threats to destroy Respondent were admitted over Petitioner's objection. Regarding this evidence, the Court instructed the jury:

> "Court's Instruction No. 30 (Plaintiff's Tendered Instruction No. 8):
>
> "Evidence tending to establish that defendant harbored ill will toward plaintiff prior to the publications in question may be considered only upon the issue of whether or not the defendant published the articles in question with knowledge of falsity or with reckless disregard whether they were false or not." (R. p. 7618), (P. Sep. App. A 221).

(3) Petitioner's position on ill will.

Petitioner's objection to this instruction was that evidence of such ill will, that is, threats, was "completely irrelevant."

Petitioner properly preserved this question from its pretrial motion through its objection to Respondent's argument by its attorney, Warren Brown. But it is the same question. Mr. Brown's argument was based upon the foregoing Instruction, which he was just starting to read when Petitioner interrupted him to make its objection. (P. Sep. App. pp. A 204-A 205).

Petitioner's tendered Instruction No. 7, refused, reads:

> "In determining whether defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not, I instruct you that the fact, if you find it to be a fact, that one or more of defendants' employees may have disliked or harbored ill will toward the plaintiff or may have made threats against him is completely irrelevant and is not to be considered by you in determining whether plaintiff has sustained his burden of proving that defendants published any accusation or statement concerning the plaintiff with knowledge that it was false or with reckless disregard of whether it was false or not." (P. Sep. App. p. A 229.)

(4) Court's ruling on threats and generic ill will expressions.

Thus the Court ruled that the threats were relevant to the issue of knowledge or reckless disregard, i.e., motive. This Court has held it essential to prove intent to inflict harm through falsehood. *(Henry v. Collins (1965) 380 U.S. 356, at 358; 13 L.ed (2d) 892, at 893).*

Where intent or design is relevant, evidence of threats, to do what the threatener did, and even generic threats, are admissible. Especially, when such intent and design is denied. *Wigmore on Evidence (3rd Ed., Sections 104, 5 & 6).* Prior publications tended to show generic ill will. But the Court restricted consideration of them to the issue of knowledge (R. pp. 2521, 33), as disclosed in the publications.

Petitioner cites no authority supporting its position. It enlarges the rule that ill will is not an adequate element, nor adequate proof of legal malice, into a rule excluding pre-publication threats to do what it did.

In no case where specific intent is at issue does the law exclude a litigant's pre-act threat to do the act. In this case, the specific intent Respondent was required to prove was Petitioner's intent to harm him with falsehoods. By the uncontradicted evidence, that is what Petitioner threatened to do, and did, and then boasted it had done.

The proper rule is too well settled to warrant granting certiorari to review it. It is the same question that was decided in *Goldwater v. Ginzburg (2nd Cir., 1969) 414 F. 2d 324,* cited by Judge DeBruler (P. App. p. 53a).

(F) ARGUMENT ON APPLICABLE LAW

Petitioner misconceives the extent of its constitutional rights. Supporting its Motion for Summary Judgment, Petition argued:

> "This, however, was not the main thrust of the *New York Times* case. The Court went much farther, to hold that the citizen's constitutional right to criticize is not limited to impersonal criticism of government. He also has a constitutional right to

> defame public officials *personally* with respect to their *official conduct.*" (Petitioner's emphasis) (R. p. 452 (o)

then added that even if the trial court rejected such de jure immunity, as stated by a minority of this Court, the majority had, nevertheless, prescribed a de facto immunity because the qualified privilege

> ". . . can be defeated only by certain proof, extremely difficult to come by, that the defamatory falsehood was published by defendant 'with "actual malice" . . . *that is,* with *knowledge* that it was false or with *reckless disregard* of whether it was false or not.'" (Petitioner's emphasis) (R. p. 452 (o)

Respondent agreed that evidence of another's state of mind is difficult to come by and was essential in his case against petitioner. He had assumed that burden by alleging:

> "3. For many months before the publication specified in Paragraph 12 hereof, defendants harbored actual malice toward plaintiff. Motivated thereby, defendants induced certain unveracious and supine persons, to furnish them with false statements, both written and oral, with the understanding defendants would not hold such statements in confidence but would publish same, as a facade for the basis of the defamatory matter specified in Paragraph 12 hereof. Defendants knew some of said statements were false and recklessly disregarded whether or not any of them were false."[1]
>
> "4. In the composition of the defamatory matter specified in Paragraph 12, defendants employed said false statements, so induced by them, and interlarded same with their own false and deceptive statements and comments, in some cases attributing

[1] Petitioner made no move to have stricken or modified the allegations of rhetorical paragraph "3.

> falsehoods of their own authorship to unidentified and mythical persons, dovetailing all together, link by link, and imprinted upon the whole composition, and the publication thereof, their own imprimatur." (P. Sep. App. pp. A172, 3).

However, Petitioner argued that the "difficult" burden was *indeed impossible unless Petitioner, itself, admitted its knowledge or reckless disregard.* It informed the court, by the common affidavit of 30 employees, agents and officers, that:

> "At no time prior to the publication of any of the exhibits attached to plaintiff's complaint (Exhibits 1 through 44 inclusive), did I have any knowledge that any of the following meanings which plaintiff alleges were conveyed by such articles was false, nor was I aware that any of such meanings was probably false. (For convenience, page and paragraph number of the complaint are given)." (R. pp. 435-452).[1]

This affidavit paraphrased *Garrison v. Louisiana (1964) 379 U.S. 64, at 75; 13 L.ed (2d 125 at 133.*

Petitioner then asserted:

> "This fact issue is completely covered by the affidavits to defendants' motion. These affidavits, executed by all persons having any responsibility for the composition and/or publication of the exhibits attached to plaintiff's complaint state that each of such persons, prior to the publication of each of such exhibits had no knowledge that any of the innuendoes alleged in plaintiff's complaint were false and was not aware that any of said innuendoes were false." (R. pp. 452 R & S)

and concluded:

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[1] This is the entire affidavit except that it then recites the meanings alleged in each of the 44 complaint paragraphs.

> "This case is a text-book example for the application of summary judgment. There is no point in this case proceeding to trial when it is apparent at the outset that this court will be required to direct a verdict for defendants for the reasons stated herein." (R. pp. 452 T & U).

Thus Petitioner postulates that on the issue of its state of mind, its own word is final. It has cited, and Respondent has found, no decision of any court embracing such a rule. This Court has held otherwise:

> "[7] The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." St. Amant v. Thompson (1968) 390 U.S. 727 at 732; 20 L.ed (2d) 262 at 267, 8.

The trial court overruled the motion (R. p. 572).

This ruling so clearly squares with St. *Amant* that there is no reason to grant certiorari to review it.

The evidence here shows that Petitioner went out *to get* Respondent, as was true in the *Goldwater* case. Petitioner

here, *as in Goldwater,* relies upon statements by others claiming an unrestricted right to publish such statements.[1]

The Second Circuit Court of Appeals decided that question in these words:

> "Citation of sources for most of the statements about Senator Goldwater in Part I of the "Goldwater issue" and the accurate reprinting in Part II of most of the original responses of psychiatrists to the *Fact* questionnaire, does not, as appellants appear to claim, insulate appellants from responsibility for any of the false statements they made. Reliance upon newspaper articles, books, and campaign literature, and upon accurate reprinting of another's letter are only factors which, with other factors, are probative of whether the publisher of the cumulated material was motivated by actual malice when he caused the full material to be published. Repetition of another's words does not release one of responsibility if the repeater knows that the words are false or inherently improbable, or there are obvious reasons to doubt the veracity of the person quoted or the accuracy of his reports. *St. Amant v. Thompson, supra* at 732. Futhermore, in our case, Ginzburg added certain innuendoes to some quoted statements[19] and quoted other statements out of context[20] in order to support his predetermined result. One cannot fairly argue his good faith or avoid liability by claiming that he is relying on the reports of another if the latter's statements or observations are altered or taken out of context. Also, if Ginzburg's "melding" and "distillation" of letters results in misplaced emphasis, or exaggeration, or distortion, he cannot reasonably maintain that the mis-statements contained in the

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[1] See Petitioner's refused instruction (R. pp. 7596, 7) which would have told the jury "—I instruct you that defendants had no duty to check the accuracy or truthfulness of any accusation or statement before publishing it, whether it was made by a third person or by defendants.—"

new product he thereby created are not his own misstatements." Goldwater v. Ginzburg, (2nd Cir. 1969), 414 F. 2d 324.

No opinion of this Court, or any other Court, comes near warranting Petitioner's conception of its rights. This is a proper case for awarding Respondent damages under Rule 56(4), in a very substantial amount, with an option to petitioner to retract in which event the damage award would be remitted to the judgment appealed from.

Respectfully submitted,

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APPENDIX

Johnson's call to Respondent November 18, 1964.

Respondent's testimony regarding Johnson's call was:

"A. Well he opened the conversation, he stated this was Rick Johnson. *He said you got a big thing going on there about secrecy and it caused us to miss this Lee Hines murder story.* I said, well I disagree with you, we don't have a big thing about secrecy, but I can explain to you why that wasn't released until it was. *And he says, no, that your policy of secrecy,* he said you by doing that, we missed a story, *The Star missed a story which it was entitled to. I said, well we can't schedule these crimes, when crimes are committed or cleared, in order to make deadlines on newspapers.* Rick said, he said well you had those people in there before our deadline, midnight last night. I said we had some suspects, that's true. We had not at that time charged anybody with murder, *we had not found the murder weapon. I explained to him that we felt that the murder weapon was very important element of the case and that had it been released, some of his confederates or associates might have possession of it or destroy the evidence,* and my policy at that time had been and continued to be that any pending investigation that if a

release of news would jeopardize that investigation, we would not release it at that time until it had been resolved. And he took the position that it was a bad policy, that's the wrong policy. *I explained to him that as far as I knew that every law enforcement ageney in the country either did have that policy or should have that policy.* I didn't know how he could argue with the policy. *I further stated that as long as I was Sheriff that would remain the policy on the Sheriff's Department.* He said, we'll see about that, and hung up." (Emphasis added) (R. pp. 6241, 2)

Johnson testified that his complaint was that:

"The apprehension were *never announced to us;* we were never informed about them, even though pickups were made well within the deadline edition time of the Star." (R. p. 7112) (Emphasis added)

Mr. Johnson did not deny any of the words Respondent attributed to him.

Johnson's call to Respondent December 3, 1964.

Respondent testified regarding the first midnight call to his home:

"I had another telephone call from Rick Johnson around midnight on December 3, 1964. He said: 'What the hell is going on down here?' I said: 'Who is this?' He said: 'This is Rick Johnson and I want to know what kind of shit is going on down here.' I said: 'Down where? What are you talking about?' He said: 'Down at your office. I'm getting jacked around down here on a case and I'd like to know what's going on.' I said: 'Well, what's it about, Rick.' He said: 'It involved a couple of shoplifters.' I said: 'Well, you hold on a minute.' I had two lines in my home so I could call the office when I got inquiries of this nature. I said: 'If you'll hold on a minute, I'll see what the trouble is.' Johnson said: 'You better

damn well find out what the problem is.' I said: 'Just cool off a little bit, we'll get this straightened out.' He said: '*By God, I'm going to put you on the front page of the paper if you don't get this straightended out.*' I said: 'Just explain to me what the problem is, I don't even know what you're talking about. I don't know anything about this case. If you'll hold on I'll check it.' And he said, he repeated this, and he was very profane. He kept this up and wouldn't let me call and said: 'You'd better straighten up,' and repeated that again about the front page of the paper, and said: '*By God, you'd better shape up.*' When Johnson said that, I got mad and lost my composure. I said: 'Well, if that's your attitude, if you're not going to be reasonable about this, you can go to hell. Another thing; you're shut off from the news down there until we get this straightened out. You go tell your boss you're off this beat. You tell him he can send any other reporter from the Star down there and they'll get treated like anybody else, but not you. I don't have to put up with that kind of abuse from you.' And we both hung up." R. pp. 6244, 5) (Emphasis added)

Johnson's Call to Respondent December 4, 1964.

Regarding the December 4th conversation, Respondent testified:

"Well he opened the conversation, he said 'This is Rick Johnson,' he says 'Are you serious about banning me from getting news down at the Sheriff's Office?' I said, 'Yes, I'm serious about it.' He said, 'You don't think you can get away with that, do you?' I said, 'Well, unless we get this thing straightened out, that's the position I'm gonna take.' I says, 'As a private individual, I don't intend to be talked to like that, and I don't think the public official . . . being a public official makes it necessary to take that kind of abuse from you.' He says, '*Well, I'm gonna keep you on the front page of the newspaper*

just as long as it takes.' I said, 'Rick, you do what you have to do, I'll do what I have to do.' He said, 'That's what I'm gonna do' and he says 'I'm gonna expose you for what you really are.' I says, 'Well, what is that?' He says, *'You're a stooge of Noble Pearcy. I'm gonna keep you on the front page of the —gonna keep you in headlines on the front page as as long as it takes.'* And hung up." (Emphasis added) (R. pp. 6247, 8)

Johnson's Call to Respondent December 5, 1964.

Johnson again telephoned Respondent at home around midnight on December 5, 1964. Respondent testified:

"Well he said, 'This is Rick Johnson.' He said 'I want to know . . . what to check to see if that ban on me getting news down here is still on.' I says, 'Yes, it certainly is.' He says, 'I thought you'd be interested in the fact that I'm sitting down here in the office now going through these reports.' I said, 'Who's the Officer on duty?' He said, 'Lieutenant French.' I said, 'Will you kindly put him on the telephone, I said 'Does Rick Johnson have the reports down there?' And he says, 'Yes.' I said, 'He's under ban of news, so you take those reports away from him, and he's under ban.' And I asked him why he gave them to him, and he said he had been on vacation and didn't know about it. He'd just went on duty that night. So I told him to put Rick back on the telephone, and he came on, and I said, 'Rick, I just told French to take those reports away from you and the ban will continue until we get this thing straightened out, you are to act like a human being.' And he says, 'Well, I told you what I was going to do. *I'm gonna keep you on the front page of the paper as long as it takes to shape you up.'* He said, 'I want you one other thing.' I said, 'What's that?' And he says, *'You remember what happened to your predecessor . . .'* (Respondent's predecessor was

Sheriff James O. Hiner, who died of ulcers). (R. pp. 6248, 9) (Emphasis added)

Hiner, Difficulties with Star.

Sheriff Hiner had also had difficulties with Petitioner once over "the forced resignation" of a Sheriff's Lieutenant because—well, let Petitioner speak for itself:

"BEHIND CLOSED DOORS

"SHERIFF'S OFFICE MORALE SO LOW"

"By the Star City Staff

"Morale in the Marion County Sheriff's office reportedly has dipped to such a low that 20 deputies are said to have applied for appointments to the Indianapolis Police Department.

"The 20 deputies, all in the sheriff's law enforcement division, represent almost a third of the law enforcement force for Republican Sheriff James O. Hiner.

"The deputies are mad because:

1. *They feel the forced resignation of Lt. Leroy Thompson by Hiner was 'too rough.' Thompson was caught in an alleged house of ill fame—his first mistake in six spotless years of service. . . .*" (R. p. 4764)

Son-of-a-bitch, "will get" or "kill".

Johnson told Prosecutor Pearcy, referring to Respondent:

"I'm going to get the son-of-a-bitch and he'd better remember what happened to is predecessor." (R. p. 4142)

During this period, Virginia Wilkes, the law librarian at the City-County Building, heard Johnson call Fields an S.O.B. and say that if it took a year he would get even with him. (R. pp. 6925, 7)

and Johnson said to Winston Churchill, an Indianapolis police sergeant, about Fields: "I'll kill the son-of-a-bitch. Politically, I'll kill him." (R. pp. 6696, 7)

Shooting for Real Trouble or be Made to Look Good in Public's Eye (Dec. 6, 1964).

"FIELDS' MUZZLING HOLDS UP NEWS"

"Marion County Sheriff Robert H. Fields *is shooting for real trouble* with a policy of muzzling his employees, as illustrated by the ridiculous situation last week when a jail matron refused to give a reporter the names and similar information on two women under arrest on shoplifting charges.[1]

"'I am not permitted to speak with reporters,' the dutiful employe stated. Fields claims he has told his workers they can disclose 'routine' information—but naturally some of them are going to play it safe by saying nothing, when the boss has a big thing about secrecy.

"*Recently, Fields' deputies did some outstanding police work, making three arrests within four hours after a beaten man's body was found in Big Eagle Creek. But he and they missed a chance to look good in the public's eye. The arrests were not disclosed that day. 'I didn't authorize it,' Fields says.*" (R. p. 4139) (Emphasis added)

Connor, Editor, Knew What Controversy was (Dec. 7, 1964).

The next day, December 7th, Respondent phoned Petitioner's City Editor, Lawrence Connor. Of this he testified:

"Q. Tell us about the conversation with Mr. Connor.

"A. He was aware of the controversy between Rick and I and aware of the fact that I had banned him from news down there and I tried to explain to him the reason for that.

[1] Johnson had the arresting officer's report in his hand while talking to Respondent. It contained all the information available (R. pp. 5086, 92)

"Q. Just tell the Jury what you said to him and what he said to you.

"A. Well, I told him about the Lee Hynes Murder Case and the shoplifter case, and explain(ed) my side of it, just as I've told here, and he said, he told me . . . he said, no you apparently got a policy of secrecy down there, you're not releasing news when you should, and he didn't agree that this policy that I explain to him was a proper policy, and he went right down the line . . . it was Rick Johnson's right, in the position he took with me, and at that time, that was the conversation. I concluded there was no point in continuing the conversation." (R. p. 6252)

About January 15, 1965, Prosecutor Pearcy, acting in the role of peace maker, arranged a dinner with Respondent and Johnson. Respondent testified regarding this.

"Well in substance he said we had this bad policy down there on news and in substance I told him that I was convinced that it was the only proper policy, we both gave our sides of the same controversy and discussed it in a friendly manner. However, we both admitted that we previously had flown off the handle probably a little premature, our attitudes and we wanted to shake hands and I told him even though we, in effect, we agreed to disagree on this particular matter as long as I was satisfied that he could discuss it like a reasonable man that I told him that I'd go ahead and lift the ban on him, which I did." (R. p. 6261)

Son-of-a-bitch Kissed Book.

After this, Detective Sergeant Felson Bowman testified he saw Johnson and said to him, "Well, I see you and my boss are getting along now," and Johnson replied, "Well, the son-of-a-biteh kissed the book." (R. pp. 3343, 5)

Killed the Wrong Man (Aug. 11, 1965).

"Haine said it was known that Johnson gave Sheriff's Lt. Marvin Pope information which led to the arrest of William S. Mobley, Malcolm W. Clark, Jr., and Fred Roberts on robbery charges last Feb. 19." ("Feb. 1964, not "last Feb.")

"Gang members believed a man named Lee S. Hynes was responsible for the tipoff. He was slain Nov. 17, 1964.

"'*But they killed the wrong man,' Haine said.*" (Emphasis added) (R. p. 2506)

Haine Framed (Aug. 20, 1965).

August 20, 1965, Petitioner editorially stated,

"The sergeant, Charles W. Haine, says he was 'framed' and that the sheriff was 'used' to frame him. Haine's claim still stands. It has not been disproved. It still hangs like a cloud over the department. The sheriff's 2,000-word 'press release' did not disprove it." (R. p. 2539)

Not one word was ever quoted from Respondent's reply to the "How About Some Answers?" editorial. But City Editor Connor was questioned about the above paragraph.

"Q. Wait a minute. We are not talking about supposition. Robert H. Fields, Sheriff of Marion County, made the statement that he had the serial numbers on ten $20 bills, which he provided to a man of ill-repute who had been convicted of misdemeanors and suspected of felonies, who said he was being shook down by Haine, and then Robert H. Fields, Sheriff of Marion County, said that he concealed himself, with his Major, and saw Haine and this man of ill-repute, Leon Johnson, meet at a filling station briefly, whereupon he went over, as Johnson left, and stopped Haine and took those same ten $20 bills out of Haine's right-hand pants pocket?

"A. Right.

"Q. *All right. Now, Mr. Connor, what I want you to explain to me is: Why was there something for the Sheriff to explain rather than something for Haine to explain, when Haine claimed he was framed?*

"A. Let me see. I couldn't say. I don't know. I didn't write it.

"Q. Doesn't anything occur to you?

"A. Not at the time.

"Q. It doesn't to me either. What evidence do you have, other than Haine's naked word that he was framed, or what claim did Haine ever have except his naked word that he was framed?

"A. *We didn't have anything else. We just reported what he said.*" (Emphasis added) (R. pp. 5865, 6)

It is true that Petitioner had well reported it before. But this was an editorial.

Johnson's Version of First McAdams Meeting (Oct. 21, 1965).

"A. The first thing that happened was McAdams was placed into Judge Fife's Jury Room with me. We were alone. I introduced myself, told him I had received information from Deputy Cottey that he wanted to talk to me. I said, 'Bud's a good friend of mine,' I said, 'How are you with Bud?' He said, 'Bud and I are fine, and I do want to talk to you, but not until I get out of Jail,' and I said, 'Well, what's it about? Can't you give me an idea?' and he says, 'Not till I get out of Jail,' so we, more or less (had a) general discussion, what you could call a 'feeling out process," I suppose, having just met each other. He told me he had worked as a boat builder some-

where in Illinois, had worked on fiber glass boats; that he was a barber by trade; that he had got a bum rap when he was convicted of theft of barber shears, that he hadn't actually stolen, he just forged a name when he hocked them. That was immaterial, so we talked for a few more minutes, and I said, 'I heard a story; I want to tell you.' So I told him that I heard that Deputy Donovan King had beaten an inmate by the name of Reagan, while this man was in solitary confinement, and had then tear-gassed him and then beat him again, and the man was later taken to the Hospital and ultimately died. I finished repeating that to him, and I said, 'Well, what do you have to say about it?' All he said was, 'That's a pretty good story.' I said, 'You mean you're not going to confirm or deny it?' He said, 'No,' I said, 'Well, will you tell your story to the Judge?' He said, 'Yes, I'll tell it to the Judge.' So at that time, I believe I left the Jury Room and went outside to see if Judge Fife was there.'

"Q. About how long did that meeting take place between you and Mr. McAdams?

"A. Well, I didn't keep any record of the time. My best estimate would be no more than thirty minutes, possibly less, because I didn't attempt to keep track of the time.

"Q. All right, then what happened when you went to see the Judge?

"A. The Judge wasn't in, and it would be some time until he did come in and reconvene Court, according to his Bailiff, Mr. Patterson. I went back into the Jury Room for a few moments and told Mr. Adams this, asked him if I could bring him a sandwich or some cigarettes. He said, 'No, I'm not hungry, and I've got a smoke,' and we might have had another conversation at that time regarding what would happen to him if he did talk. He wanted to know if he could get out of Jail, and I said, 'There

are a number of things; there could be probation; time could be cut to time served. There's any number of things that could happen, but that is not up to me. That's *up to the Judge; and it all depends upon what you have to say.'* He made no comment on this. He still wanted to talk to the Judge, and at that time I left him in the Jury Room and I believe Deputy Hall then placed him from there into the Lockup.

"Q. Did you later that day then, meet with Judge Fife?.

"A. Yes.

"Q. What happened then?

"A. I introduced McAdams to the Judge and told him that McAdams had a statement to make to him, and Judge Fife said, 'Well, what is is?' and McAdams said, "I seen a deputy beat a guy to death in the Marion County Jail,' and Judge Fife and I, more or less alternated asking the questions at that time, and Judge Fife fixed the approximate date, I believe, and it was at this time that McAdams split the information I had received originally from Deputy Atwell into two separate incidents instead of one incident, as I had been proceeding on.

"McAdams said that Reagan was not tear-gassed; that Mr. Reagan was beaten after an argument with the deputy over some medicine. Mr. McAdams made the tear gas episode a completely different incident and placed it on a completely different person at a later time. Now the statement, the written statement, which was taken the next day is probably the best record of what McAdams said regarding those two incidents." (R. pp. 7165, 8)

This statement is in the record (General Exhibit 237A; (R. p. 2595)

Also, this is Johnson, on cross, clearing up some omissions from his direct examination at the trial:

"A. I told the Judge that this man had something he wanted to say, that he didn't want to talk to just me, that he wanted to talk to the Judge. I said, 'I'm not certain what it is but I'd like for you to hear it.'

"Q. Didn't you say to the Judge at that time, "I think he's got a murder"?

"A. It's possible I did.

"Q. All right. Then you and McAdams were in the Judge's chambers and you had a talk, and you have testified to that on your direct examination. Can you think of anything else that was said there, that you didn't tell us on direct examination?

"A. At this moment, I don't.

"Q. Let me see if this refreshes your recollection.

"A. O. K.

"Q. And the fact that McAdams made the statement, and it was brushed under the rug, '*it could only lead to having a new Sheriff*. (Emphasis added) (R. p. 7324)

"A. Yes, sir, I thought that was brought out on direct examination." (R. p. 7325)

Excerpts From All Complaint Exhibits (Oct. 27 through December 28)

The following panoramic view of publication paragraphs discloses who appellant made the villain in the public eye. For 41 days each publication mentioned Reagan or Crick, or both. The central theme was the fabrication appellant put in McAdams' mouth.

Following are, one or more, paragraphs from each of the 44 Complaint Publications, with emphasis added:

October 27th (No. 1) Classification 1.

"Pearcy met for 25 minutes with Sheriff Robert H. Fields to inform him of the charges. *Fields was visibly shaken* when he left the meeting. He said he would follow 'whatever course is necessary to get to the bottom of this.' 1-14-4-2 (R. p. 43)

The tipster gave Johnson the name of the deputy and some advice:

"Don't start nosing around the jail. *They (the prisoners and deputies) are scared to death.* No one dares to talk about it." 1-1-7-8 (R. p. 44)

October 28th (No. 2) Classification 2.

"*Fields said he received a repudication* of the missing man's signed statement that a jail deputy was responsible for the beating, after his deputies grabbed the man and brought him to the sheriff's department before and after he testified before the Grand Jury. 2-1-5-6 (R. p. 45)

"*Pearcy said he saw nothing irregular about Fields questioning McAdams* before and after the grand jury testimony and Fields said he considered this within his rights. 2-7-3-9 (R. p. 45)

"McAdams agreed to meet with Pearcy yesterday to take a polygraph (lie detector) test but failed to appear and could not be located." 2-7-3-7 (R. p. 45)

"*Fields and Pearcy* are close political and personal friends." 2-7-4-11 (R. p. 45)

"Allegations of murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history." 8-1-7-2 (R. p. 47)

"*Now Sheriff Robert H. Fields* says he has obtained a 'repudiation' of the witness's original ac-

count of the fatal attack on Reagan. How did he get it? What were the circumstances under which it was obtained? What would induce the witness to change his story?" 2-1-7-11 (R. p. 47)

"Irregularities in the Marion County sheriff's department, climaxes with the controversial death of a prisoner, have become almost commonplace during the last year." 2-7-3-1 (R. p. 48)

"Most were kept secret from the public until dug out by newspapermen." 2-7-3-2 (R. p. 48)

October 29th (No. 3) Classification 2.

"In yesterdays' hearing, Fife blasted Prosecutor Noble R. Pearcy for his handling of the case. The judge asked Pearcy if, in view of the *close personal relationship between the prosecutor and Sheriff Robert H. Fields*, he would rather step aside in the case. 3-14-5-4 (R. p. 49)

"'Absolutely not,' Pearcy answered. 3-14-5-5 (R. p. 49)

"It seems odd to us that Prosecutor Noble Pearcy should see nothing wrong in the fact that deputies from the sheriff's office and *the sheriff himself* should call a chief witness, who had appeared before the grand jury for interrogation, and get a retraction of his grand jury testimony from him." 3-1-7-6 (R. p. 50)

"Another question: *If the sheriff and his deputies had nothing to fear from* a grand jury investigation, if they know that they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence? It makes you wonder, doesn't it?" 3-1-7-8 (R. p. 50)

October 30th (No. 4) Classification 2.

"*Fields said McAdams repudiated the statement* he gave The Star during questioning after his grand jury testimony Tuesday. Pearcy declined to say when McAdams repudiated his statement." 4-17-1-11 (R. p. 51)

October 31st (No. 5) Classification 5.

"The statements by the prisoners were the latest chapter in the mushrooming story of apparent brutality in the jail which has been unfolding since The Indianapolis Star started an investigation into the death of Elmer L. Reagan." 5-12-4-2 (R. p. 53)

November 1st (No. 6) Classification 4.

"The jury has been investigating jail brutality since The Indianapolis Star revealed last week that one inmate, Elmer L. Reagan, who died in Marion County General Hospital of pneumonia caused by a beating, allegedly was attacked by a deputy." 6-1-7-5 (R. p. 54)

November 2nd (No. 7) Classification 2.

"Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted." 7-1-8-6 (R. p. 55)

"The stepped-up protection for witnesses came after *Sheriff Robert H. Fields and deputies seized* one witness last week and questioned him before and after he appeared before the grand jury." 7-1-8-7 (R. p. 55)

November 3rd (No. 8) Classification 2.

"*Sheriff Robert H. Fields said McAdams later repudiated* the statement during questioning by the sheriff and deputies, but McAdams' girl friend, Mrs. Lura Kimbley, said McAdams told her he was given

whiskey during the interrogation." 8-18-3-8 (R. p. 56)

November 4th (No. 9) Classification 2.

"McAdams told of Reagan's beating to the grand jury. Then he was picked up by deputies, *interrogated, and, according to Sheriff Robert H. Fields, repudiated his original statement.*" 9-12-2-1 (R. p. 58)

"Reagan was beaten July 14, and died Aug. 7." 9-12-2-2 (R. p. 58)

November 5th (No. 10) Classification 3.

"Reagan died Aug. 7 of pneumonia brought on by the beating and 12 broken ribs. McAdams repudiated his statement after he *was questioned by sheriff's deputies* before and after his grand jury testimony Oct. 26." 10-14-4-5 (R. p. 60)

November 6th (No. 11) Classification 3.

"Thomas was the second witness to come forward to corroborate the account which McAdams first gave in a notarized statement, then repudiated after he had been *questioned by Sheriff Robert H. Fields' deputies.*" 11-1-1-3 (R. p. 67)

"'I think McAdams was threatened or scared and that's why he changed his story,' Thomas said." 11-23-1-8 (R. p. 61)

November 7th (No. 12) Classification 2.

"Then he disappeared.

"The following day, Sheriff *Robert H. Fields, under whose jurisdiction the jail is run, declared the missing man had repudiated his statement.*" 11-2-1-11 (R. p. 63)

November 8th (No. 13) Classification 3.

"McAdams later repudiated the statement after he was *questioned twice by Sheriff's deputies,* once before and once after his grand jury appearance." 13-21-4-7 (R. p. 64)

November 9th (No. 14) Classification 2.

"McAdams repudiated the statement after *he was questioned by Fields and deputy sheriffs* both before and after he appeared before the Marion County Grand Jury to testify in the case." 14-1-2-2 (R. p. 65)

November 10th (No. 15) Classification 2.

"McAdams later repudiated the statement after *he was interrogated by Fields and his deputies,* but since then four persons have stated that McAdams had told them about Reagan being beaten by a deputy." 15-10-3-6 (R. p. 66)

November 11th (No. 16) Classification 4.

"Neville, in a notarized statement to The Star, stated he had seen an 'old man' in the basement cage last July who was pushed against a wall by a deputy and fell unconscious." 16-1-8-11 (R. p. 68)

November 12th (No. 17) Classification 4.

"Neville selected Crick's photograph from among 10 Indianapolis Police Department 'mug shots' yesterday in the presence of five State Farm security guards, including Maj. Robert Garrison and Capts. Charles A. Thompson and James Lyon. Crick's photograph had not previously appeared in newspapers." 17-1-3-4 (R. p. 69)

November 13th (No. 18) Classification 2.

"McAdams appeared before the Marion County Grand Jury Oct. 26, but he was taken to the sheriff's office in the jail both before and after the jury

appearance and *questioned by Fields and deputies.*" 18-1-5-11 (R. p. 71)

"McAdams subsequently repudiated his original statement. But more than a dozen other prisoners later gave statements indicating brutality at the jail." 18-1-6-3 (R. p. 71)

November 14th (No. 19) Classification 4.

"However, evidence that his death Aug. 7 in Marion County General Hospital resulted from a beating at the hands of deputies instead of a mentally ill inmate put his name into public conversation to a degree he never enjoyed in life." 19-1-5-2 (R. p. 72)

November 15th (No. 20) Classification 3.

"McAdams later repudiated the statement after he was *seized by sheriff's deputies and interrogated twice.* He then was rearrested and was made a jail trusty. However, at least four persons have stated that McAdams told them of Reagan's beating." 20-1-5-4 (R. p. 73)

November 16th (No. 21) Classification 4.

"About 120 persons have testified before the jury since the jail brutality probe started after another inmate signed a statement charging that Elmer L. Reagan, held on a drunkenness charge, was beaten and kicked by a jail sergeant several weeks before he died Aug. 7 of pneumonia brought on by beating injuries." 21-16-4-6 (R. p. 74)

November 17th (No. 22) Classification 2.

"In the current investigation, *Sheriff Robert H. Fields ordered his deputies to pick up and question the inmate,* Charles P. McAdams, who had signed a statement that Reagan was beaten by a jail sergeant." 22-28-5-2 (R. p. 75)

November 18th (No. 23) Classification 4.

"Reagan died of pneumonia brought on by beating injuries. According to Charles P. McAdams, another inmate, Reagan was beaten by a jail sergeant. McAdams later repudiated the charge but four persons said McAdams told them he had seen a deputy beat a prisoner who later died." 23-16-4-5. (R. p. 76)

November 19th (No. 24) Classification 3.

"However, McAdams repudiated his statement after he *was picked up and questioned by deputy sheriffs* before and after his testimony before the grand jury." 24-31-6-7 (R. p. 77)

November 20th (No. 25) Classification 6.

"Elmer L. Reagan and Danner Crick, the two men whose deaths in the jail are being probed by the jury, both had serious drinking problems." 25-12-3-4 (R. p. 78)

November 21st (No. 26) Classification 5.

"The County Grand jury is expected to make a special report Tuesday on its findings in its extensive investigation into alleged brutality in the County Jail." 26-23-3-4 (R. p. 79)

November 22nd (No. 27) Classification 5.

"A total of 129 witnesses have been heard by the jury in its investigation of two jail deaths and inmates' charges that they were beaten by deputies." 27-1-5-2 (R. p. 80)

November 23rd (No. 28) Classification 5.

"New York City—Robert F. Squillan said yesterday he threatened the life of President Lyndon B. Johnson in order to avoid return to Indiana and possible imprisonment in the Marion County Jail." 28-1-7-1 (R. p. 81)

"In a notarized statement to his attorney, William C. Erbecker, Squillan reported he was threatened and harassed by an investigator for the Sheriff's department to the extent that he 'blew my top.'" 28-1-7-2 (R. p. 81)

"Squillan's statement came on the eve of a Marion County Grand Jury report on charges of brutality at the jail which is scheduled to be returned this morning." 28-1-8-1 (R. p. 81)

November 24th (No. 29) Classification 7.

"Criticism mounted last night in the wake of a Marion County Grand Jury report which 'exonerated' the sheriff's department of brutality charges."

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, *charged the report was a 'whitewash' of the situation at the county jail.*" 29-1-5-1 (R. p. 82)

"McAdams repudiated his original statement after he was questioned at length at the sheriff's office both before and after his appearance before the grand jury. 29-12-1-3 (R. p. 82)

"*Marion County Prosecutor Noble R. Pearcy and Sheriff Robert H. Fields are close personal friends and political allies.* 29-1-5-6 (R. p. 82)

"The Prosecutor's office assists and guides the jury throughout its investigations and consequently can play an enormous part in determining the direction any probe will take and its conclusions." 29-1-5-7 (R. p. 82)

November 25th (No. 30) Classification 7.

"All six members of the Marion County grand jury petitioned to be dismissed yesterday because of 'attacks upon our integrity and character.' 30-1-6-1 (R. p. 84)

"The jurors referred to criticism from Judge Eugene M. Fife Jr. of Criminal Court, Division 1. 30-1-6-2 (R. p. 84)

"Judge Fife had termed the jury's report on alleged brutality at the Marion County Jail a *"whitewash."* 30-1-6-3 (R. p. 84)

"The plan was proposed following the Marion County Grand Jury investigation of alleged brutality in the county jail. The jury exonerated the sheriff's department, but Fife called the panel's report a *'whitewash.'"* 30-1-7-7 (R. p. 85)

November 26th (No. 31) Classification 3.

"McAdams repudiated his statement after he was questioned twice by the Sheriff's department, once before and once after his grand jury appearance. McAdams now is a 'trusty'—a privileged prisoner—at the jail." 31-14-7-1 (R. p. 86)

November 27th (No. 32) Classification 7.

"Fife had said the grand jury has been 'just an adjunct of the prosecutor's office.'

"Fife earlier had termed the report a *"whitewash of the charges against the deputies of Sheriff Robert H. Fields, who is a close personal and political friend of Prosecutor Pearcy."* 32-1-5-1 (R. p. 88)

November 28th (No. 33) Classification 7.

"The Marion County Grand Jury's report on the jail was termed a *'whitewash'* by Judge Fife, other public officials and some local leaders. Judge Fife said he did not blame the jurors, calling them *'the victims of a whitewash manipulation staged by the prosecutor's office.'"* 33-1-8-8 (R. p. 89)

November 29th (No. 34) Classification 7.

"Judge Fife said he did not blame the jurors, calling them 'the victims of a *whitewash manipulation staged by the prosecutor's office."* 34-1-5-5 (R. p. 90)

November 30 (No. 35) Classification 7.

"Fife asserted:

"I don't blame the grand jury for the *whitewash. I lay the blame on the prosecutor's office. It is no secret that Prosecutor Pearcy and Sheriff Fields are close personal friends and political allies.* And I believe that the record will show Mr. Pearcy was influential in having Fields appointed sheriff." 35-1-8-8 (R. p. 91)

December 1st (No. 36) Classification 5.

"Marion County Sheriff's Sgt. Donovan L. King did not resign from the department because of the grand jury probe of alleged county jail brutality, Sheriff Robert H. Fields said yesterday." 36-1-2-1 (R. p. 92)

December 3rd (No. 37) Classification 7.

"The jury's report, which exonerated the sheriff's department of the brutality charges, was termed an 'obvious *whitewash*' by Judge Eugene M. Fife, Jr. of Marion Criminal Court, Division 1. He charged that the *prosecutor's office had steered the members of the grand jury in their investigation.* 37-1-5-2 (R. p. 93)

"McAdams's statement was turned over to the grand jury by Gaither who began an investigation. McAdams repudiated his statement after he was questioned by sheriff's deputies before and after his grand jury testimony." 37-11-8-3 (R. p. 93)

December 11th (No. 38) Classification 7.

"But the inmate repudiated his statement after he was questioned before and after his grand jury testimony by sheriff's deputies. 38-23-2-2 (R. p. 94)

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, termed the grand jury report an obvious '*whitewash which had been steered by Prosecutor Noble R. Pearcy to protect his friend and political ally, Sheriff Robert H. Fields.* 38-23-2-5 (R. p. 94)

December 15th (No. 39) Classification 7.

"The report was termed an *obvious whitewash* by Judge Eugene M. Fife Jr. of Marion Criminal Court, Division 1. Fife said the grand jury had been *steered to its conclusion by Prosecutor Noble R. Pearcy, friend and political ally of Sheriff Robert H. Fields.*" 39-1-3-3 (R. p. 95)

December 18th (No. 40) Classification 3.

"Judge Eugene M. Fife Jr. of Criminal Court, Division 1, yesterday ordered Charles P. McAdams to serve the remainder of his six-month jail term at the Indiana State Farm, *for his own safety, after denying his request for release.*" 40-27-4-1 (R. p. 96)

"McAdams, 35 years old, triggered an investigation of the Marion County Jail in October, when he signed a statement in which he said he saw a deputy sheriff beat a prisoner, Elmer L. Reagan, 50, who later died. 40-27-4-2 (R. p. 96)

"Judge Fife freed McAdams on Oct. 25, commuting a six-month sentence for violation of the Offense Against Property Act, to time served. *McAdams, however, repudiated his statement after he was questioned by sheriff's deputies before and after his testimony before the grand jury, and Fife ordered McAdams' jail term reinstated.* 40-27-5-1 (R. p. 96)

"In yesterday's habeas corpus hearings, McAdams' attorney, William C. Erbecker, attacked the reinstatement of the sentence by Fife, saying once the judge had altered the commitment to time served, the judge no longer had power to reinstate the sentence. 40-27-5-2 (R. p. 96)

"Fife overruled the point. However, he said that, *due to reports he had received that McAdams feared for his safety in the jail, he was going to order him to serve the remainder of his term at the State Farm.* 40-27-5-3 (R. p. 96)

"McAdams is eligible for release in February." 40-27-5-4 (R. p. 96)

December 23rd (No. 41) Classification 7.

"The jail inmate later repudiated his statement. The jury investigated jail conditions four weeks and then exonerated the sheriff's office and indicted Brown in a special report. 41-8-3-14 (R. p. 97)

December 24th (No. 42) Classification 7.

"The grand jury conducted a four-week probe of jail conditions and in November exonerated the sheriff's office and indicted Brown." 42-11-8-5 (R. p. 98)

"The report was described as a '*whitewash*' by Judge Eugene M. Fife Jr. of Criminal Court, Division 1." 42-11-8-6 (R. p. 98)

December 26th (No. 43) Classification 7.

"After hearing jail brutality (43-1-1-13) charges by more than a dozen prisoners and listening to 129 witnesses, the grand jury declared that the sheriff's department was not guilty of wrongdoing. The finding touched off widespread charges of a grand jury '*whitewash*.'" 43-1-2-1 (R. p. 99)

December 28th (No. 44) Classification 7.

"The grand jurors had become angry because Judge Fife criticized their special report, which he termed a '*whitewash*' of alleged brutality in Marion County Jail." 44-1-3-4 (R. p. 100).

Complaint Exhibit excerpts classified.

It was in No. 29 that the code word "whitewash" was adopted and defined as it was later used in the series of publications.

We have classified these paragraphs with code numbers 1 through 7 in the upper right hand corner. In the following analysis, the classification number is in parentheses.

(1) One said Respondent was shaken.

(2) Eleven said Respondent questioned McAdams, which, in context, was equivalent to intimidation.

(3) Seven said Respondent's deputies questioned McAdams.

(4) Six said a deputy or deputies killed an inmate.

(5) Five said jail brutality was under investigation.

(6) One referred to the two men whose deaths were being probed.

(7) Thirteen used the term "whitewash," the groundwork for which was laid in Nos. 3 and 4, as the Prosecutor protecting Respondent from the clear accusations admitted by Pulliam, then clearly defined with that code word in Nos. 29, 32, 33, 34, 35, 37 (a recovery publication), 38 and 39).

Every publication recovered upon, and most of them in between, had a reference, in context, to the original accusations. The questioning referred to was on October 26th, no other time. Other charges of "brutality" were related to the King-Reagan case. For example, see No. 12 (R. p. 63) (P. Sep. App. p. A 60).

Eleven times Petitioner published that Respondent personally participated. Seven times it was said "the" or "Fields'" deputies did.

The Reagan Case—Uncontradicted Evidence.

There is not a shred of evidence in this record that anyone, other than William A. Brown, ever beat or kicked Elmer Reagan. Nor is there a shred of evidence in this

record that anyone, other than Charles McAdams, ever said Sgt. King or any person, other than Brown, did. If there is, we challenge Petitioner to cite same.

Sgt. Robert Smith, Deputy Burris and Deputy Kirkman all testified that trustys called them, about 6:45 A.M., July 14, 1965, in the heat of the fray, saying Brown was attacking Reagan; that they rushed down to the basement cage and shackled Brown.

All this testimony is adequately summarized, so we will merely cite the record for the testimony of these witnesses on this subject.

Sgt. Robert Smith: Regarding the actual fray: (R. p. 2160, 3; 2168); on cross-examination: (R. pp. 2215; 2217, 8; 2220, 30). On re-direct: (R. pp. 2235; 2241, 6).

Deputy James Burris: Regarding the actual fray: (R. pp. 2253, 7); on cross-examination: (R. pp. 2257, 73); on re-direct: (R. pp. 2273, 80); on re-cross: (R. pp. 2280, 2). On final direct: (R. p. 2283); final cross: (R. pp. 2283, 4).

Deputy Robert Kirkman: Regarding the actual fray: (R. pp. 2446, 51); on cross-examination: (R. pp. 2451, 63).

Four of the trustys were called as witnesses to the attack:

Otis Maier: Regarding the actual fray: (R. pp. 2866, 71); on cross-examination: (R. pp. 2871, 79); on re-direct: (R. pp. 2879, 80).

Joseph Winburn: Regarding the actual fray: (R. pp. 6928, 33); on cross-examination: (R. pp. 6933, 48); on re-direct: (R. p. 6948); on re-cross: (R. pp. 6948, 9).

George Cox: Regarding the actual fray: (R. pp. 2843, 49); on cross: (R. pp. 2849, 66).

Emmett Smith: Regarding the actual fray: (R. pp. 2880, 84); on cross-examination: (R. pp. 2884, 98).

The Eye Witness Testified Before the Grand Jury.

These are the 7 witnesses called in this case who testified to any first-hand knowledge of how Reagan was injured.

Reagan case—already before Grand Jury before first libel publication (Sept. 9 to Oct. 25), and future witnesses.

Prior to the first accusatory publication, October 27th, the following witnesses had testified before the Grand Jury: Vanis York, September 9th; Joseph Winburn, September 28th; Sgt. Robert Smtih and Sgt. James Mellene, September 9th; Orlando Paff was subpoenaed for September 29th and October 25th, but did not appear (General Exhibit 297B; R. p. 4059). After October 27th, the additional witnesses were called (General Exhibit 297A, 13 pages; R. p. 3993). At the name of each witness we will give the date of his appearance and his number on the witness list for that day:

William A. Brown, November 12, 1965; 1st witness
James Burris, November 1, 1965; 3rd witness
George Cox, November 2, 1965; 1st witness
Robert Kirkman, November 1, 1965; 4th witness
Otis Maier, November 2, 1965; 2nd witness
Sgt. Robert Smith, October 29, 1965; 3rd witness
Emmett Smith, October 27, 1965; 13th witness.

Furthermore, Petitioner had known there were eye witnesses since August 14, 1965 (General Exhibit 184, par. 5; R. p. 2541).

Reagan to hospital in daylight, not wee, dark hours (July 14, 1965) and Petitioner's knowledge of this.

Petitioner narrated these 35 pages on a ratio of 1 to 28, whereas its direct examination of Mr. Johnson was on a ratio of 1 to 3.4. Nevertheless, we will use Petitioner's narration on this point:

"In McAdams' statement about Deputy King beating Reagan, he fixed the time of the first beating about 6 P.M. and the second at about 7:30 P.M. McAdams then said that about 10:45 P.M. King brought Reagan to the Attorney's Cage and hit him and kicked him again, and that Reagan was still laying there about 1:30 A.M. the next morning, when McAdams went to sleep. This was in the evening of July 14 and the morning of July 15." (R. p. 7196, 7201).

"Plaintiff's Complaint Exhibit 12 (R. p. 3569), an article published in the Star on November 7, 1965 and written by me on November 6, 1965 states that: 'McAdams, who later repudiated his story after questioning by deputies, originally maintained that Reagan was first struck at 6 P.M., July 14th. Records show Reagan was taken to the hospital at 5:09 P.M., July 14th. Did McAdams tell the truth, but make a mistake about the time or day? Or did he make up the story.' I probably learned about this inconsistency in McAdams' statement on Thursday, November 4 or Friday, November 5, from the hospital records. I probably told either Mr. Connor or Mr. Cadou about it. I got the information from the hospital records. One of the doctors read them to me. Mr. Connor said: 'Lay it out. We really don't know. Lay it out there just the way you found it.' I don't think we talked about putting this inconsistency in any earlier story. The story I wrote on August 12, 1965 about Reagan's death stated that Reagan had been sent to the hospital on July 14. In reading McAdams' statement, it did not occur to me that he had said in effect that Reagan had not been sent to the hospital until July 15. I did not realize this until I checked the hospital records sometime in November. This inconsistency was pointed out in the November 12 story, but it was not put in any story

published after November 12,* although McAdams' original accusation was reported in most of them in one form of another." (R. pp. 7196-7231. Petitioner's Summary of Evidence, pp. 1172, 3)

* Actually November 7th story, Complaint Exhibit *12*.

This was a telling discrepancy. Contrary to the emphasis upon Regan's hospitalization being on the 15th instead of the 14th, Respondent attaches little importance to that. Jail inmates are not apt to know dates. But they aren't apt to mistake 5 P.M. in July for the wee dark hours of the morning.

It was not easy to get Mr. Johnson down to the point. This contributed to the wide ratio mentioned above.

The other two points to Johnson's testimony were that he knew of this telling discrepancy before Complaint Publication No. 11, on November 6th, and that his superiors did learn of the telling discrepancy not later than when they saw his copy for No. 12, November 7th. When they so learned is quite important as an explanation of the jury's first verdict. At first Johnson fixed the time of his superiors' knowledge as Thursday, November 4th.

"Q. Do you think you talked to Mr. Cadou?

"A. I think so, yes.

"A. And that would have been Friday, November 5th?

"A. Most likely it might have been Thursday night." (R. p. 7208).

Even November 5th knowledge should have prevented publication of Complaint Exhibit 11, on November 6th, headlined:

"EX-CELLMATE BACKS BEATING REPORT" (See p. 50) which reports upon "Mac-Told-Me" witness, George Thomas. It contained no hint of the telling discrepancy.

Reagan ambulatory problem; hospital records, which were read to Johnson.

When Warrum transferred Reagan to the Basement Cage, he was carried down. He was never seen walking by Warrum (R. p. 4254).

Many others swore Reagan claimed he couldn't walk and didn't. On June 28th Reagan walked with assistance and staggered even then. However, hospital records confirm Reagan's claim to the fact he claimed leg and hip difficulties. During the 47 days preceding his arrival at jail, he had been to the hospital 6 times, as follows:

May 10th, passed out downtown, stated he had seizures. Time in hospital one hour, 26 minutes (Reagan Med. 8; R. p. 6768).

May 27th; blacked out. Police brought him in after "most recent episode." Time in hospital, one hour, 54 minutes. (Reagan Med. 7 & 7A; R. p. 6769.)

June 3rd; "Legs and hips hurting him," "filthy and unshaven," "self referred." Time in hospital, 29 minutes. (Reagan Med. 6 & 6A; R. p. 6770.)

June 17th; "Legs hurting—both legs have been aching for a week." Self referred. Time in hospital, 53 minutes. (Reagan Med. 5 & 5A; R. p. 6771.)

June 21st; "Sick man," "been here 3 times for same complaint, pain in legs and hips," self referred. Time in hospital, 1 hour, 28 minutes. (Reagan Med. 4 & 4A; R. p. 6772.)

June 26th; Referred by police; drunk; "says he has pain in (left) hip." Time in hospital, 4 hours, 40 minutes. (Reagan Med. 5B; R. p. 3337.)

This was before Reagan entered the Jail. He was complaining of pain in his left hip. The "anatomical Diagnosis" of the August 8th autopsy states:

> "The left hip has a recent dislocation of the head of the femur posteriorly." (Reagan 113; R. p. 4842.)

Reagan was brought to Jail June 27th.

June 28th. This record says "self referred" but he was taken by Sheriff's Department. "See 2 d. (days) ago for hip pain." In hospital 2 hours, 50 minutes. (Reagan Med. 2 & 2A; R. p. 3340, 3446.)

July 8th. Referred by Police (means Sheriff). Time in hospital, 1 hour, 20 minutes. "Pt. (patient) is a prisoner at M.C. Jail for drunkenness. Another prisoner in room states he lied in bed on back most of time. Pt. is ambulatory—however appears to be suffering from chronic brain synd(rome). Exam.—beginning sacral deceibitus and 6-8 "scattered abrasions on shins." "Poor skin care. Recommendations (1) Nursing home care (2) Return .pm." "*Signature*" "unable to sign." (Reagan Med. 1 & 1A; R. p. 6773.)

July 14th, entered hospital—see Reagan 39, 40 & 41, below.

August 6th. The day before Reagan died the Neurology Staff commented upon this condition. (Reagan Nos. 39, 40, 41; R. p. 6779.) These can be read in the Summary. For convenience the first part of the Summary is here copied:

> Stamp record shows entry 7-14-65 at 5:09 P.M.
>
> "'51-year-old white male entered on the 14th of July, 1965, following injuries sustained while in Jail. Seen previously in receiving ward by Dr. Davis in post-ictal state. At that time there was no complaints pertaining to the lower extremities. Since this time there has been apparently a gradual loss of power in

lower extremities (or whether this occurred following a beating is not clear), and loss of bladder and bowel control as well as continued confusion and unresponsiveness. Also nurses have been impressed with alternating tremors (considered DT's at one time) which did not impress Dr. Davis when he saw him in June.' Alternating tremors may be related to seizures. 'Today he shows a sensory level to upper thigh and perhaps higher. Responses are poor everywhere, however. With Vigorous painful stimuli, however he flinches from lower abdomen upward and gives no response from thighs down. . . .'" (Pet. Summary of Evidence, pp. 1101(b), 1102.)

Johnson testified that sometime during the week prior to November 7th he examined, or had these medical records read to him (R. p. 7208). So Petitioner's reporter, Johnson, knew of this medical history prior to the first recovery publication.

Pearcy tells Petitioner's Reporter (Dean) of Reagan's ambulatory problem.

Judge Pearcy told Petitioner's reporter, John Dean, that Respondent told him Reagan claimed he couldn't walk (R. p. 4053, 54). Dean was not called by Petitioner.

Pulliam, E. S., Assistant Publisher's A. M. interpretation of articles.

"Q. Go down to the foot of the column below the two pictures of Denzil Neville and Jimmy Green and let's read, 'Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined $10 to $500 and jailed from 10 to 60 days if convicted.' 7-1-8-6. Next paragraph, 'The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared (R. p.

5297, LL. 20 to 27) before the grand jury." 7-1-8-7. Do you want to state there was no implication against the Sheriff in quoting that tampering statute and then making that statement about him immediately following? Is that your position?

"A. No.

"Q. What is your position?

"A. Well, my position about what? . . .

"A. *This does say in so many words that Sheriff Fields and deputies seized the witness.*

"Q. *Yes.*

"A. *And that is as you say, an implication?*

"Q. *Yes?*

"A. *Yes it is.*

"Q. *And it is an implication that he had violated that statute against tampering with witnesses, isn't it?*

"A. *I don't agree to it.*

"Q. *You don't agree to it?*

"A. *No.* . . . (Emphasis added.)

(R. p. 5297, 9.)

"Q. . . . Tell me the purpose of citing the statute on tampering with witnesses in paragraph 7-1-8-6, immediately before reciting that the Sheriff and his deputies had seized this witness. What was the purpose of putting it there if it wasn't to put an implication on the Sheriff?

"A. Well, you are reading that into it. The reason it was in the story, my guess would be, that we often in newspaper stories, you report what the penalty of a violation of some kind will be and that is what is done here.

"Q. And what violation were you talking about, did it have some kind of violation that you are talking about in the story.

"A. Well, there were a number of witnesses by this time involved in this, not just McAdams.

"Q. What violation were you talking about? Don't you (R. p. 5300, LL. 10-27) think the reader—

"A. Any possible violation of the rights of a witness.

"Q. *All right, Mr. Pulliam, you don't think that the redder would construe that to mean that that penalty applied to Sheriff Robert H. Fields who was named in the next paragraph, you don't think so?*

"A. *Not he alone.*

"Q. *No, no, no that isn't an answer to my question. Do you think the reader would think that was a penalty due Sheriff Robert H. Fields on the basis of those two paragraphs?*

"A. *Not necessarily, no.*

"Q. I just wanted your view." (Emphasis added.) (R. p. 5300, 1.)

MR. JACOBS: That's Complaint Exhibit 3. ". . . Let's read from the Editorial. Now in the Editorial, this is The Star speaking, isn't it?

"A. That's right.

"Q. All right. 'It seems odd to us that Prosecutor Noble Pearcy should see nothing (wrong) in the fact that deputies from the sheriff's office and the sheriff himself should call a chief witness, who had appeared before the grand jury for interrogation and get a retraction of his grand jury testimony from him.' 3-1-7-6. Is there an implication against the sheriff there?

"A. I still say, an implication of what?

"Q. *Intimidating witness McAdams in the Reagan murder case, that is what we are talking about.*

"A. *I suspect, yes.*

"Q. *You think there is?*

"A. Yes there is." (R. p. 5249, 50.)

"Q. I beg your pardon, it is, sir. These blur sometimes in the copying. 'Another question: *If the sheriff and his deputies had nothing to fear from a grand jury investigation,* if they know what they are in the clear on the charges against them, why did they not just let the investigation proceed and clear them of the charges? Why did they grab the witness and haul him down to the jail which led to his changing his story? If it is untrue, could they not prove it by the facts and records already in existence?' 3-1-7-8.

"'It makes you wonder, doesn't it?' 3-1-7-9.

"*Do you mean that that didn't carry a preceding implication against the Sheriff prior to the time you quoted this tamepring statute over here? That is your Editorial, Mr. Pulliam.*

"A. *Sure it is.*

"Q. *Did it carry any implication against the Sheriff that he was tampering with the witness in a murder case?*

"A. *Yes.*

"MR. SCANLON: *He is asking if you if it carried an implication against the Sheriff personally that he was tampering in a murder case.*

THE WITNESS. *No.*

"Q. *I didn't say Sheriff's department and I don't think Mr. Pulliam thought I did and the Editorial doesn't say it. He* (it) *says, if the Sheriff and his deputies.*

"A. *It says if the Sheriff and his deputies had nothing to fear from the grand jury investigation.*

"Q. *Now, do you think that carries an implication against the Sheriff himself?*

"A. Yes, I think so.

"Q. All right, I thank you." (Emphasis added.) (R. p. 5303, 4.)

"Q. I have a full page anyway, so we can establish that. Let's read paragraph 2-1-7-2, 'Allegations of " 'murder in the jail, a beating by a sadistic deputy, a frame-up of an innocent man and attempts to intimidate a grand jury witness all add up to the ugliest compound of accusations to be made in a sorry chapter of the department's history.' 2-1-7-2.

"Now there is no question but what that is referring to the murder of Elmer Reagan, is it?

"A. That's correct.

"Q. There is no question but what the sadistic deputy referred to was Sergeant Donovan King?

"Yes, it does.

"Q. Well, he is the one that was charged, right?

"A. (No response.)

"Q. All right. Now, 'frame-up of an innocent man' no doubt that refers to William A. Brown?

"A. Right. (R. p. 5323, 4.)

Pulliam, E. S., Assistant Publisher's P. M. interpretation of articles, also, "cumulative meaning."

"Q. . . . Now, some of these paragraphs I have read to you, you said you think carry implications against the Sheriff in implicating (sic, intimidating) McAdams in the Reagan murder?

"A. You mean some of the stuff we have read this morning?

"Q. Not all of it but some of it.

"A. Yes, a couple at most.

"Q. And I think you might concede that some might be debatable too?

"A. Anything is debatable, any newspaper story is debatable, different people read it different ways.

"Q. *And you think some of it might be read by some people the way I thought and some by the way you thought?*

"A. *Of course.*

"Q. Okay, fair enough. But you don't think that this series was an effort to attack the Sheriff, is that right?

"A. No." (R. p. 5326, 7.)

"Cumulative Meaning," Petitioner adopts, for objection purposes.

"A. Just the last two paragraphs.

"Q. All right, you think by reading the whole editorial it puts a different meaning on it, is that right?

MR. SCANLON: *You say the whole editorial or all the articles?*

"A. *As I said before, you have to put all this together, the editorial is based on news stories we printed.*

"Q. *In other words, you accept your answer your lawyer gave?*

"A. You permit that, wouldn't you?

"Q. Let me ask you this question and *you give me your present answer.* Did it, referring to the last two paragraphs of the editorial you just read, carry any implication against the Sheriff that he was tampering with the witness in a murder case, now, give me your answer?" (R. p. 5665.)

MR. SCANLON: "*I object to that for the reason the question as Mr. Jacobs knows, is not what one isolated article implies or what sentence means but the whole thing means. All the articles and that of the entire article implies.* Do you want to amend your question, you are asking him only about two paragraphs?" (Emphasis added.)

MR. JACOBS: "Are you instructing him not to answer, you haven't instructed him?"

MR. SCANLON: "I will not instruct him, I think that is the proper question, what I have said. Do you want to rule on that, Your Honor?"

JUDGE: "Objection overruled."

"A. As I said before, implication to me means involvement, not implication and guilt, which I think you are trying to get me to say.

"Q. *Let me read this question to you again and I want you to answer me: 'Did it—Exhibit 3, paragraph 3-1-7-8 and 3-1-7-9—'carry any implication against the Sheriff that he was tampering with the witness in a murder case?*

"A. *I am not changing my testimony.*

"Q. *Let's read the rest of it. Go to page 51, after you answered that question yes. 'Mr. Scanlon: He is asking you if it carried an implication against the sheriff (R. p. 5666) himself?' Answer: 'Yes, I think so.' Is that your testimony?*

"A. *Yes, the editorial says it's the sheriff's office that is accused of wrongdoing.*

"Q. *That is the testimony you gave?*

"A. *Yes.*

"Q. *Do you want to change it?*

"A. *Yes, on the context of this.*

"Q. *State your changes.*

"A. *I have already said it as best I can that implication to me means involvement.*

"Q. *What does tampering mean?*

"A. *I don't know, that is your question?*

"Q. *You don't know what tampering means?*

"A. *Not legally, no.*" (Emphasis added). R. p. 5667)

Pulliam, E. S.—Mind Clears Under Questioning by Own Lawyer.

"Q. Turn to Exhibit 248, first column. I am going to read three paragraphs, 7-1-8-6, 7-1-8-7 and 7-1-88, 'Persons found guilty of tampering or intimidating witnesses or impeding justice could be fined from $10 to $500 and jailed from 10 to 60 days if convicted.

"'The stepped-up protection for witnesses came after Sheriff Robert H. Fields and deputies seized one witness last week and questioned him before and after he appeared before the grand jury.

"'The witness, Charles P. McAdams, 35 years old, had signed a notarized statement accusing a sheriff's sergeant of the fatal beating of an inmate, but, according to Fields, repudiated the statement during the questioning by Fields and deputies.'

"Now you don't think anyone would read that as indicating that Sheriff Fields had violated that statute in reference to tampering, is that correct?

"A. Not personally." (R. p. 5729, 30)

Lewis, Ed., Conference with Reporter Johnson.

"He said that no one knew about this, that this meeting was off the record, that no one was aware that he was there except his Editors, and he didn't identify who the Editors were, and he had a sheet of paper with a list of names on it, and he read off the names and only two of the names were familiar to me that I recognized were Funk and Scott, and I suppose maybe there were a dozen people on the list, or 10, and he said that he wanted these people suspended immediately and replaced by the Sheriff's Road Patrol, who in turn should be replaced by the State Police, the Sheriff should bring in the State Police, *and that he wanted the Sheriff to state publicly that when McAdams repudiated his statement*

that he was lying, and that if the Sheriff would make these concessions why they'd lay off him. And he continued that he had evidence of other murders and that he was going to leave my office and investigate those further, so I told him I would relay this information to the Sheriff, and I did, and the Sheriff said 'If Ri x Johnson wants to be Sheriff, he'll have to run for the office,' and I had no further contact." (R. p. 5034, 36)

Connor, Lawrence, Regarding Neville and Crick.

"Q. You are telling me sometime between the 20th day of November, 1965 and the 24th day of November, 1965, you did learn that Denzil Neville was not in jail at any time since the beginning of the world down to the present time when Danner Crick was there?

"A. I read it in another paper but it didn't convince me at the time.

"Q. But you did have it checked?

"A. Partially completed.

"Q. Did you ever complete the check?

"A. No. I intended to when I got back on Tuesday morning, that is when the Grand Jury report came in and it seemed pointless to go on with that." (R. p. 6123)

Continuing with Mr. Connor:

"Q. You have published a story a deputy sheriff slammed an old man up against the wall. Let's go to 271 where you published the story. Let's read 17-15-3-2: 'Mr. Crick kept coming out, so the deputy walked over to him, took a hold of him and pushed him back into the cage. The old man went up against the wall and hit the wall and fell down.' 17-15-3-3. 'I thought he was dead fore they took him out, they way the old man acted' Neville said. 'They carried him upstairs and he was limp. I thought he was dead when they carried him upstairs.' You

published that on the 12th day of November, 1965, and on the 20th day of November, 1965, you had notice that one Denzil Neville was not in the jail at the time Crick was, you later checkup and found out it was true he was not in the jail during the time Crick was. To this day you have never corrected that statement.

"A. I found out in recent days, I see no reason what purpose would be served by putting it in the paper. No, we haven't.

"Q. I think I could explain that to you, Mr. Connor, but I don't think I could comprehend it for you." (R. p. 6127, 8)

Omissions from Hembree and Roberts Statements.

Regarding the "meld" and "distillation" of the publication, there were many enlightening examples. Fred Roberts, a convict member of the Mobley Mob. (R. p. 4528 par. 13) gave a statement to Petitioner on November 5th. (R. p. 5400) Asked and he answered:

"Q. When was the last time you saw any brutality in the jail?

"A. More than two years ago. I've been in the jail six or seven times, maybe more, since that time."

Regarding this, Petitioner's Reporter Donohue was asked and answered:

"Q. You knew that about covered the time Sheriff Fields had been Sheriff, didn't you?

"A. It would just about cover, it would cover the whole time, I believe.

"Q. You had him—Roberts was talking about something that happened three years ago?

"A. Yes.

"Q. Here in his statement he had been in jail six or seven times, maybe more, in the last two years

and he hadn't seen any brutality in that time. Where, if anywhere, did you tell the public that?

"A. It is not here.

"Q. You just didn't tell them, did you? All right, was there some reason you didn't put that in your story, Mr. Donahue?

"A. It may well have been that I put it in and when they were hooking the stories together it got a little long and got knocked out, although I can't say for sure." (R. p. 4491)

But later when Mr. Donohue was asked about a similar omission from the statement of one Hembree (R. p. 4207) he reverted to the Roberts omission and asserted he had included both omissions in his manuscript:

"Q. All right, let's go ahead. 'Anything else from that time in jail?' 'Not that I can think of.' Question: 'When was the next time you were in jail?' 'I spent two weekends there in September of this year but I couldn't truthfully say I saw anything out of the way those times.' 'Why were you in jail those two weekends?' Answer: 'No operator's license. The judge gave me six days and said I could do it on two weekends.'

"Now, look very carefully I want to know for sure whether or not you have anything in that story about that.

"A. I don't find anything.

"Q. Make sure, positive, that is one we have been leading up to.

"A. I don't see it.

"Q. All right. Why didn't you put it in?

"A. *I did some searching on this case and with the other case. I am sure I put those in the original story (meaning his manuscript).*

"Q. *In the Roberts'?*

"A. *That other situation.*

"Q. *Where he hadn't said he hadn't seen anything in the last two years?*

"A. *Right.*

"Q. *You are sure you put that in?*

"A. *Yes.*

"Q. *And you did in this case?*

"A. *I am sure I did.*

"Q. *And somebody took it out?*

"A. *The answer is yes.*" (R. p. 4499, 4500)

Reporter Donohue was confirmed, regarding his reporting Hembree's disclaimer. His manuscript was produced. (R. p. 4234) Donohue included this quote from Hembree:

> "I spent 2 weekends in September of this year (1965) but I couldn't truthfully say I saw anything out of the way."

Reporter Donohue was also confirmed regarding his inclusion of the Roberts statement. City Editor Connor acknowledged Mr. Donohue's manuscript contained this statement:

> "Q. Turn to page 7 of 260 (MS). Go to line 17, about the middle of the line. 'Russell added that, although he has been in jail six or seven times within the past two years he has not seen any brutality for more than two years.' Now that is the statement of Fred Russell Roberts. I think if you will check you will see that it is, correct?
>
> "A: Yes. (R. p. 6096, 7)

Connor's Explanation.

City Editor Connor was later afforded the opportunity to comment on the omissions. He was asked and answered regarding the Roberts' omission:

> "Q. Well can you tell me why (sic) (while) you were writing about 'brutality at the jail (?) (sic)

wasn't it newsworthy that for two years here is a man who was a rather frequent customer, at least I would think so, six or seven times in two years, and I think if you consider the fact that he was part of the Mobley gang, he was a rather experienced person, hadn't seen brutality for two years, just during the very period that Sheriff Fields was Sheriff. Can you tell me why that was taken out?

"A. Just a—

"Q. Matter of judgment, is that right?

"A. Matter of judgment. The fact that the stories were about brutality in the jail, not non-brutality." (R. p. 6098).

The interruption was because Mr. Connor's response to such "melding" and "distillation" had become so commonplace that he invariably gave the common answer—"just a matter of judgment"—so the interrogator knew what he was going to say and spontaneously interjected it.

For just a few such examples (see R. pp. (5873) (5879) (5884, 5) (5891, 3) (5895-5897) (5900, 2) (5905, 9).

Fife, Judge and His Relations with Petitioner

On his discovery deposition, appellant's Assistant Publisher, E. S. Pulliam, was being pressed for names of other denouncers of appellee, besides The Indianapolis Star, and, of course, its criminal clients.

"A. . . . I can't name you names but I talked to attorneys who were concerned about this but I don't remember specifically which attorney.

"Q. Bill Erbecker?

"A. Oh, no.

"Q. What do you mean by 'Oh, no'?

"A. Merely because he does not have a good reputation as an attorney in this community. I am speaking as a layman.

"Q. Oh no?

MR. SCANLON: What do you mean 'Oh, no'?

"Q. I thought he was one of your stand-bys from the articles." (R. p. 5498, LL. 16-27).

"A. Well, you are entitled to your opinion.

"Q. All right, we will get to Bill later. Name some lawyers you talked to.

"A. I told you, I don't remember any.

"Q. Well, you don't talk to so many lawyers, do you, that you couldn't remember one or two?

"A. You are asking me under oath to be specific about my memory of a conversation of a year ago, a passing conversation at a country club or cocktail party, at lunch or on the street and I don't remember specifically.

"Q. Mr. Pulliam, I don't think it is casual when you run an article here saying that the Sheriff would be bombed out because of criticism. The criticism I have come across of Sheriff Fields has been in the Indianapolis Star.

"A. There has been considerable of it.

"Q. Yes. I am trying to find out who else was critical.

"A. Well, there is a fellow named Judge Fife and several other judges that are quoted in this story.

"Q. Is that the same Judge Fife that you cartooned in your newspaper in his judicial robes standing in line with a thug paying his taxes, is that the same one?

"A. It may have been, I don't remember the cartoon.

(Objections and discussion omitted)

"It may have been, I don't remember the cartoon.

"Q. Well, you remember he didn't pay his taxes, don't you?

"A. I do now." (R. p. 5499, 5500)

"Q. You don't remember the cartoon?

"A. No, I don't remember the cartoon.

"Q. Well, let's see if I can refresh your recollection."

(Document displayed to the witness).

"Do you remember seeing that cartoon that is marked here as XYZ 4?" (R. p. 5501)

(Objections and discussion omitted)

"Q. Do your remember seeing that cartoon that is marked here as XYZ 4?"

"A. I am sure I saw it, but I don't recollect it."

"Q. You don't have any recollection of it. I will ask you if it isn't a fact that that cartoon marked as XYZ 4, ran in the Indianapolis News prior to the time these articles ran, about Judge Fife not filing his Federal Income Tax returns and not paying his personal property tax for ten years, and then you quoted him all through these articles 'Called it a whitewash,' you called the 'Grand Jury a whitewash' and he ran for office in the Spring of 1966 and you never said one word about him paying taxes, isn't that the truth?"

MR. SOSHNICK: I object to that as being argumentative and not inquisitive.

COURT: Objection overruled.

"A. I would have to go back and read all of the articles before answering that. I haven't done that." (R. p. 5502)

"Q. All right, tell you what you do, you find me any article where you related this on Judge Fife, after you had quoted him so copiously in these articles.

"A. It seemed to me we reported it pretty forcibly in that cartoon.

"Q. Yes, that was in February of '65. Did you report it when he became a candidate?

"A. I would have to go back and check.

"Q. Did you write an article in Behind Closed Doors that said he was disinclined to run and then began to feel he should fight back at the mounting criticism but now faced the realization that the opposition would bomb him out? Did you have any article like that in relation to Judge Fife?

"A. Not that I know of.

"Q. Judge Fife said what you wanted him to say in these cases, didn't he?

"A. I don't know what you mean.

"Q. Don't you know, Mr. Pulliam, that your reporter read that Grand Jury report on October (sic) (November) 23, 1965, and called it a whitewash and then went in and interviewed Judge Fife and Judge Fife coincidentally called it a whitewash? That your reporter called it a whitewash first, did you know that?

"A. *It had been called a whitewash long before that.*

"Q. *Well, it only came out that morning. How was it called a whitewash before that?*" (R. p. 3503)

"A. *In the legal fraternity in Indianapolis.*

"Q. *Name me one lawyer.*

"A. *Thomas Scanlon.*

"Q. *Your lawyer?*

"A. *Yes, sir.*

"Q. *Oh, now there is just no use to go any further, is there? Name me another one.*

"A. *I told you, I couldn't remember it, the names of the others.*

"Q. *When did Tom call it a whitewash?*

"A. *This was before and how far before, I don't recall, but before the Grand Jury Report came out.*

"Q. Well, I will take Mr. Scanlon's deposition and find out how he knew what that Grand Jury report was going to be. That is quite interesting.

"Well, at any rate, leaving Judge Fife aside for the moment, are there any other instances where you have been very critical of someone up to a certain point and they did the Star a favor and then you ceased to criticize them and began to praise them? Can you think of any cases of that kind?" (Emphasis added)

MR. SOSHNICK: Object to that question because of the word "other." It assumes that was the situation in this case.

COURT: I'll sustain the objection." (R. p. 5504)

"Q. At any rate, you will get me any article about Judge Fife, after the publication of these forty-four articles, that criticized him about his tax situation, will you?

"A. Well, how much time do I have to do this?

"Q. I don't know how much time you have to do that.

"A. Well, you are ordering me to do it.

"Q. I am asking you to do it.

"A. Well, when do you want it?

"Q. I don't mean this afternoon, of course not. A reasonable time."

MR. SCANLON: In due course we will supply whether or not there is such an article.

MR. JACOBS: Yes, we will work that out." (R. p. 5505)

Of course, there is no such article in the record.

"DEPUTY TIPSTERS," THE PUBLICATION AND THE FACTS.

"Johnson Digs 11 Weeks to Get Facts." Tells of Tipsters.

This is also General Exhibit No. 238 (R. p. 6706) The second article in Complaint Exhibit 1 (R. p. 44) carried a one-column headline, "Reporter Digs 11 Weeks To Get Facts", and reads as follows:

> Rick Johnson, reporter for The Indianapolis Star whose investigation of the beating-death of Elmer L. Reagan led to the Marion County Grand Jury probe yesterday, has been working 11 weeks on the story 1-1-7-3.
>
> On Aug. 11 he first discovered that Reagan had died. He reported it in The Star the next day. 1-1-7-4
>
> Then two days later on Aug. 14 *he received a tip from a man who told him:* 1-1-7-5
>
> *"You haven't even got half of the story. The nut didn't kill that man. A deputy did."* 1-1-7-6
>
> *The tipster gave Johnson the name of the deputy and some advice:* 1-1-7-7
>
> *"Don't start nosing around the jail. They (prisoners and deputies) are scared to death. No one dares to talk about it."* 1-1-7-8
>
> Johnson waited a few days and then began asking questions of his tipsters about what he had heard. Deputies and former inmates said they, too, had heard the story but could not provide detailed information. They promised to —(1-1-7-7)—relay any information they obtained. 1-14-1-1
>
> *The vital tip came at 1 a.m. Oct. 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14. The deputy provided Johnson with the name of the alleged attacker and with names of other prisoners who saw the attack and were willing*

to talk. Some had been moved to other penal institutions. 1-14-1-2

On Oct. 8 another deputy gave Johnson the names of deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cellblock who could have seen the beating. 1-14-1-3

The two tipsters had given almost identical information. 1-14-1-4

Judge Eugene M. Fife Jr., Criminal Court, Division 1, was informed about the information Johnson received. 1-14-2-1

On Oct. 21 he called in the prisoner who had talked to the deputy. The prisoner gave Judge Fife and Johnson the entire story of the beating. 1-14-2-2

Fife then advised that the Marion County Coroner's Office be notified. The next day, Bethel E. Gaither, chief investigator for the coroner, and Johnson met in Fife's office with the prisoner. At that session the prisoner made a statement and signed it. It then was notarized. 1-14-2-3

Last Monday Gaither showed the statement to the coroner, Dr. Robert C. Collins, who ordered the information taken to the grand jury. 1-14-2-4

Yesterday Gaither turned the statement over to James E. Bath, chief deputy for the grand jury, and to Prosecutor Noble R. Pearcy. They took it to the grand jury. 1-14-2-5 (Emphasis added)

Tipsters, and Petitioner's Passion for the Truth.

From Respondent's Indiana Supreme Court brief:

The latter was Deputy Cottey. Two of the other deputy informants were Finney and Atwell. (Tr. p. 7161, L. 16 to p. 7163, L. 27; Summary of Evidence pp. 1162 to 1163). For obvious reasons none of these deputies were identified in appellant's publications. Appellant also refused to identify them by name dur-

ing discovery exercising rights under Sec. 2-1733 (*Burns Ann. Statutes*, 1968 Replacement, Vol. 2).

"A few weeks before he left office, the appellee in an obvious attempt to secure a commitment from each jail deputy that he was not one of Johnson's tipsters, had each of them summoned to the sheriff's office and deposed on this subject. (Tr. p. 6651, L. 8 to p. 6652, L. 27; Summary of Evidence p. 1070). At such time *every deputy dutifully denied he had ever talked to Johnson as described in the publications*. Appellee, thus assured, then subpoenaed every deputy, and told the jury on opening statement that he would prove there were no deputy informants as stated in appellant's publications.

"But on trial deputies Finney and Atwell, as appelee's witnesses, completely ruined appellee's theory that there were no deputy tipsters *by truthfully admitting their talks with Johnson all as reported in appellant's publications.*" (Tr. p. 3690, L. 7 to 3740, L. 27; p. 4158, L. 1 to 4171, L. 2; Summary of Evidence, pp. 438 to 444; 510e to 512) (Emphasis added). (Appellant's Brief pp. 145, 6).

(From the record, Rick Johnson testifying).

"Q. Now in the course of this lawsuit, *have those deputies who were your tipsters* been asked by the plaintiff under oath about their conversations with you?

"A. Yes, they have.

"Q. And in that way they were forced to reveal themselves?

"A. They have." (R. p. 7181) (Emphasis added)

What a passion for the truth!

Johnson's testimony was utterly false and Petitioner knew it. The statement from the brief is true except that none of the tipsters testified that their talks with Johnson were "all as reported in Petitioner's publications."

Space precludes the full story but it is part of the record set out in copious quotations and record citations, beginning at page 146 through page 192 of Respondent's-Appellee's brief in the Indiana Supreme Court.

RECORD QUOTES REGARDING TIPSTERS.

The article printed above was one of two comprising Complaint Exhibit 1 (R. pp. 43, 44). City Editor Connor wrote the article from Reporter Johnson's manuscript, the first 3 paragraphs reading:

> "On Aug. 14, two days after Elmer Reagan's death was bared, the Indianapolis Star received an anonymous tip that 'You haven't got half the story—the nut didn't kill that man—a deputy did.'
>
> "The tipster identified the deputy but when pressed for further details said, 'I know what I am talking about—what I said is true but I can't afford to get involved.'
>
> "~~The only other~~ information the tipster provided was, 'Don't start nosing around the jail—they are ~~just laying for you~~[1] scared to death. No one dares to talk about it.'" (R. p. 6056)

The key testimony of Atwell and Finney, and all of Cottey's, are quoted below as well as excerpts from both Connor's and Johnson's depositions.

Fear; Don't Know Who They Feared.

"The tipster gave Johnson the name of the deputy and some advice:

[1] The 4 words lined out are X-ed out on the exhibit and can be seen at (R. p. 6056). The anonymous tipster became "a man" in Connor's rewrite. At the trial Petitioner claimed this was Sgt. Robert Atwell, and the other two deputies were Cottey (par. 1-14-1-2) and Finney (Par. 1-14-1-3).

" 'Don't start nosing around the jail. They (prisoners and deputies) are scared to death. No one dares to talk about it.' " (October 27, 1965, 2nd article of Complaint Exhibit 1, R. pp. 44 & 2627).

In reference to this paragraph, Reporter Johnson was asked, and answered:

"Q. All right. Now who did he say was scared?

"A. The deputies.

"Q. Who else?

"A. The prisoners, too.

"Q. All right. If the deputies and the prisoners were scared, who else was left besides Sheriff Fields, to be afraid of?

"A. I don't know what you mean. If the deputies were scared and the prisoners were scared, who else was there—to talk to?

"Q. Who else was left to be afraid of?

"A. Maybe the big, bad wolf. I don't know what you're talking about.

"Q. Did you ever see any wolves down around that jail?

"A. I've seen a lot of vultures down there, too.

"Q. You answer my question.

"A. Yes; wolves. Some of them wear hundred dollar suits.

"Q. All right. Now who was there, outside of the prisoners and the deputies, in that Jail, to be afraid of, outside of the Sheriff? Let's quit stalling.

"A. Who was there to be afraid of, outside of the deputies—who was it?

"Q. The deputies and the—Who was there at the Jail to be afraid of, outside the deputies and the inmates? You say the deputies were afraid, and the inmates were afraid. Who was it they were afraid of?

"A. I can't pinpoint that for you." (R. p. 3337, 8)

Connor, City Editor, Refuses to identify "Deputy Tipsters" But Did Identify Williamson Who Feared for His Life if it Became Known He had "Talked".

"Q. Do you believe the story McAdams told about Sergeant King beating Reagan? You still believe it?

"A. Yes.

"Q. You do? All right. I will ask you this question: Do you know of anybody in the world who will testify that they ever saw Sergeant King lay a hand on Elmer Reagan?

"A. No, I can't say flatly that I do, no.

"Q. Well, can you say that roundly that you do. Do you have anyone in mind that you think might say so?

"A. No.

"Q. What do you base your belief on? Just give me all the information that makes you believe that Sergeant King beat up Elmer Reagan.

"A. Based on the statement that we got from—

"Q. Of McAdams?

"A. Based on that and some earlier rumors that we had gotten about the same situation.

"Q. About Reagan?

"A. Yes.

"Q. Tell me who gave you any earlier rumors.

"A. I can't do that.

"Q. Why can't you?

"A. That would be revealing a source of our tips.

"Q. Well, you have revealed a lot about who gave you information in these stories. Why can't you tell me those?

"A. Because the reporter made a promise that he wouldn't.

"Q. You made a promise to Paul Williamson that you wouldn't reveal his name too, didn't you?

"A. Is he one of the prisoners?

"MR. SCANLON: Yes.

"Q. Well, off and on. I'm not—I think maybe you caught him between some of his frequent trips to jail. I think he was outside when you talked to him.

"Q. I'm going to read 4-17-1-13, 14, 15, and 4-17-2-1. "A parolee told The Star Thursday night that he entered the Marion County Jail in July, and although he didn't witness the beating he heard conversations between McAdams and the cell boss, in which McAdams told a "story almost identical to the statement he gave Chief coroner's office investigator, Bethel E. Gaither.

"The parolee said he would like to testify about the beating and other incidents of brutality in the jail but he feared reprisal by deputies if he ever went to jail again.

"If they ever found out I was talking it wouldn't be safe for me to walk the street,' the parolee said. He added, 'There are a lot of guys who could tell plenty if they weren't so scared. Keep going—you haven't even scratched the surface.'

"The parolee said, 'I know McAdams. He would never have broken if he hadn't been forced. He just wasn't that way.'"

Now let's take Interrogatory 4J that we have propounded to the Defendants. I am reading it to you; it is a matter of record: "Identify the parolee referred to in paragraphs 4-17-1-13 through 4-17-2-1, and furnish any statement he made." Answer: "Paul Williamson."

Now, why did you tell on Paul Williamson when he said he was afraid for his life, walking the streets,

if you are determined not to reveal the source of information?

"A. I don't remember why we did. Must have been a reason.

"Q. Maybe, could it be the reason that there is such a person as Paul Williamson and there is no such person as this deputy tipster?

"A. No.

"Q. What is this deputy tipster afraid of that he doesn't want to be identified? Is he afraid of violence, or losing his job?

"A. That's up for him to say. I wouldn't know. (R. pp. 5921, 5)

Mr. Johnson identified that "anonymous tipster" as Sgt. Robert Atwell. (R. pp. 7151, 3)

Atwell, Robert, the Anonymous Tipster.
Excerpts From Testimony.

"Q. The quote is, 'You haven't even got half the story. The nut didn't kill that man, a Deputy did.'

"A. No, sir, I didn't say a Deputy killed him." (R. pp. 4174, 5)

SIDE NOTE: Four days earlier Sgt. Haine had said of Hynes' murder, "But they killed the wrong man." (R. p. 2506, Pars. 9, 10, 11).

And again:

"Q. All right. Then did you say to Rick Johnson on that occasion, or any occasion, 'I know what I'm talking about. What I said is true, but I can't afford to get involved?'

"A. I didn't know anything about it, all I had was rumors to that, it wasn't me.

"Q. Well, did you say: 'I know what I'm talking about?'

"A. No, sir.

"Q. Did you say: 'What I said is true, but I can't afford to get involved?'

"A. No, sir." (R. pp. 4175, 6)

And again:

"Q. I'll read this third paragraph and then I'll ask you some questions about it: 'The only other information "the tipster provided was: "Don't start nosing around in the Jail, they are scared to death, no one dares talk about it.'" Now, did you make a statement to Mr. Johnson, 'don't start nosing around the Jail, they are scared to death. No one dares talk about it?'

"A. No, sir, I didn't say that.

"Q. Did anyone at the Jail ever tell you that they were scared over this rumor?

"A. No, sir.

"Q. All right, now I want to ask you this question in another way. Did you ever make a statement to Rick Johnson, 'Don't start nosing around the Jail, they are just laying for you, no one dares talk about it?'

"A. No, sir. (R. pp. 4176, 7)

"Q. Now, I'll read the next statement to you. 'A retired Indianapolis Detective when questioned regarding the tactics used to arrive at the facts warned, 'Don't barge in or all the doors will close. Everyone is scared right now. Wait and then start asking some questions of your tipsters and tell them the story you have heard. Eventually you'll get a tip that will pay off.' Did you ever make a statement of that kind?

"A. No, sir, I did not.

"Q. You are not a retired Indianapolis Detective are you not?

"A. No, sir, I'm not.

"Q. Did you know Charles W. Haine?

"A. Yes, sir, I do.

"Q. Was he a retired Indianapolis Detective?
"A. Yes, sir, he was." (R. pp. 4176, 8)

Atwell Had Reasons to be Pliable.

The evidence does not disclose openly blackmailing Atwell, as in Finney's case, which is next. But it does disclose three facts by which Petitioner could have "put him through journalism school."

First: Some $1171 loot from an in-city robbery was taken from the Mobley Mob when recaptured (see supra P. 6). This was properly delivered to the City Police. However, Atwell went and retrieved it and it was stolen from Respondent's office. Johnson knew, and questioned Atwell, about this (R. pp. 7144, 5) and the date is fixed by General Exhibit 179, (R. p. 4528, pars. 13-16). The date was Aug. 12, 1965, the next day after the "They Killed the Wrong Man" story. (R. p. 2506, pars. 9-11). (R. App. P. 8a supra)

Second: Atwell was Haine's partner when they returned Schriver from Milwaukee (R. p. 2549, par. 11). (See p. 7, supra).

Third: See (p. 70a-71a infra) regarding receiving money from an attorney in Court, and Johnson told the attorney he had heard it.

Considering Petitioner's use of the McAdams' accusation, Atwell could see the possibilities without having them crassly pointed out to him, as was done in Deputy Finney's case. Atwell was a complete surprise to Respondent.

Finney, Tipster, Excerpts from Testimony.

At the trial, Mr. Johnson Swore:

"This deputy referred to in 1-14-1-3 is Deputy William Finney." (R. p. 7364)

The paragraph in question reads:

> "'On October 8th, another Deputy gave Johnson the names of the deputies who were involved in the beating or had first-hand knowledge of it. He also provided the names of the prisoners in the cell block who could have seen the beating.' 1-14-1-3. (R. p. 44)

On this we will adopt Petitioner's summarization of Finney's testimony on direct:

> ". . . In October of 1965, I was working in the jail. I had a telephone conversation with Rick Johnson *late in October of 1965 after The Indianapolis Star article entitled 'Deputy Accused in Death' appeared. Johnson called me at my home in connection with a man named Hinshaw. Johnson told me that Hinshaw was trying to cause me trouble; but that he, Johnson, would not put my name in the papers, because he had known me for a long time. I was also asked if I knew who worked the second shift in the jail.* I gave Johnson some names off of the roster that I had which included King, Roscoe Kennedy, Grunden, Marshall and Ping. The date of July 14, 1965 was not mentioned in the conversation. Johnson also asked me about the prisoners that had been in the jail a long time and I told him that McAdams, George Ray Brown, John Martin Young, Ronald Burton and Clayton Stalnaker were people who had been there for some while." (Emphasis added) (R. pp. 3682, 90)

Finney Confessed Duplicity Before Trial.

Finney was not a complete surprise, despite his deposing he had never had a conversation with Johnson. When paid mileage and witness fees on Respondent's subpoena, he demurred that he couldn't accept them since he had given a statement to the other side. Then he told Respondent's lawyer what he testified on direct (R. pp. 3729, 31). Petitioner's cross-examination would indicate that it was surprised that

Finney had confessed to his duplicity. But before it was over, everyone was surprised.

Mr. Finney's written testimony attests that he was not extraordinarily brilliant. It finally came out he didn't think King killed Reagan; but that Deputy Rankin was involved because of something he heard that Rankin had said during 1966 while Rankin was a patient in the psychiatric ward at Veterans Hospital (R. pp. 3780-3790, long and rambling).

Petitioner Tries Again To Move Date Back.

"Q. That was before October 26th, wasn't it?

"A. . Well, I'm—I'm tryin' to establish a date there. I'm not quite familiar . . . the incident I was involved in with Mr. Hinshaw is the date I can't find out to verify, and when I was in your office, you went over to that book there or somethin'—some book that had a bunch of pictures, and Mr. Price went over to it, *and you come up with a date of sometime on the 8th of October, right?*—So I don't know what date it was. But I think it was later than that, *because he called me, and his remark was that he had stirred things up down at the Sheriff's office.*" (Emphasis Added). (R. p. 3700)

"Q. Mr. Finney . . .

"A. *And I answered his questions he asked me because I feel obligated to Mr. Rick Johnson.*

"Q. Mr. Finney, did you ever mention to me at any time in our long conversation, anything about a man named Hinshaw?

"A. I did sir. I did." (Emphasis Added) (R. p. 3705)

"Q. Well, now why was it you called M. Johnson?

"A. I asked him if he had knew of any reason why I had got transferred to that position. Why I'd been transferred to the jail.

"Q. I see. You were asking him why you got transferred?

"A. I asked him, I called him, I think he will verify that. He's sitting right there.

"Q. I see. You called him to ask him why you had been transferred?

"A. If he had heard of any reason why I'd been transferred back there. He stated at that time that he didn't know.

"Q. I see.

"A. *But he says, you ain't gonna get hurt, he said, 'If they give you some stuff back there, get in touch with me.'*" (Emphasis added) (R. pp. 3716, 17)

"A. I believe in my conversation with you and Mr. Price at your office, *I said I couldn't tell the date.* It was sometime after Mr. Hinshaw's deal, I was not positive on any date, but it was after that and it was a couple or three weeks after my . . . Mr. Hinshaw *and you* . . .

"Q. *Okay.*

"A. *Went there and you provided me with the date of the 8th, and I've used that date that it was after the 8th or the 8th, that I talked to him.*" (Emphasis added) (R. p. 3734)

Cottey, Tipster, His Total Testimony.

Johnson, on direct, identifies Cottey:

"Q. When it says, The vital tip came at 1 A.M., October 7. It was a report that a prisoner told a deputy sheriff that he had seen another deputy beat Reagan on two different occasions on July 14." Who was that tip from?

"A. That was Deputy Arthur Cottey.

"Q. The next sentence, "The deputy provided Johnson with the name of the alleged attacker and

with names of other prisoners who saw the attack and were willing to talk." Was that Cottey, too?

"A. Still Cottey speaking. (R. p. 7163)

Cottey's Deposition, All That Was Read, At Trial.

Petitioner had already read its cross-examination of Cottey before Respondent read any of Cottey's deposition. However, it is printed here, as taken, rather than as read:

COTTEY'S DIRECT TESTIMONY.

"MR. JACOBS: Q. Question this is Arthur Cottey: "Did you ever have a conversation with Rick Johnson regarding the death of Elmer L. Reagan?

"A. Never.

"Q. Did you ever have a conversation with Rick Johnson regarding Elmer L. Reagan?

"A. No, I can't say as I did.

"Q. Or Charles P. McAdams?

"A. No.

"Q. Did you ever say to Rick Johnson this, or this in substance, in regard to the death of Elmer L. Reagan, 'You haven't even got half the story. The nut didn't kill that man, a Deputy did'?

"A. Did I ever hear that before?

"Q. Did you ever say that to Rick Johnson?

"A. No.

"Q. Did you ever say to Rick Johnson: 'Don't start nosing around the jail, they (referring to prisoners and deputies) are scared to death. No one dares to talk about it.'

"A. Did I ever say to Rick Johnson 'quit nosing around the jail'? (The previous question was read to the witness by the notary.)

"A. No, no, I never.

"Q. Did you in regard to anything else, say that?

"A. I never told him to quit nosing around the jail. I didn't have the right to tell him that.

"Q. Did you tell him prisoners and deputies were scared to death?

"A. No.

"Q. Did you ever say to Rick Johnson, that is, did you state the name of a deputy sheriff . . .

"MR. JACOBS: Strike that.

"Q. Did you ever relate to Rick Johnson a report that a prisoner had told a Deputy Sheriff, you or any other Deputy Sheriff, that he had seen Deputies beat Reagan on two different occasions on July 14th, 1965?

"A. No.

"MR. JACOBS: 17 is passed.

"Q. Did you ever provide Rick Johnson with the name of the alleged attacker and with the names of other prisoners who saw the attack and were willing to talk?

"A. No.

"Q. Did you ever give Rick Johnson the names of Deputies who were involved in the beating, we are referring to the Reagan beating, or had first-hand knowledge of it?

"A. No.

"Q. Did you ever provide Rick Johnson with the names of prisoners in the cell block who could have seen the beating?

"A. No." (R. pp. 6819, 20)

COTTEY ON CROSS.

The Petitioner read from its cross-examination of Cottey before Respondent read any of it.

"Q. 21, page 30: Mr. Cottey, I don't know whether you understood Mr. Jacobs' question. He asked you if you had ever had a conversation with Mr. Johnson in which the name of Charles P. McAdams was mentioned; you have had a conversation with him in which his name was mentioned?

"A. Yes, I wasn't asked that. McAdams' name wasn't brought out.

"Q. I didn't think you understood it. You have had conversations with Mr. Johnson in which Mr. McAdams' name has been mentioned?

"A. I had a lot of conversations with Mr. Johnson where McAdams' name was mentioned.

"Q. And as a matter of fact you told Mr. Johnson, did you not, Mr. McAdams wanted to talk to him?

"A. McAdams said, he didn't necessarily say to Rick Johnson, he said he wanted to talk to a reporter.

"Q. This was sometime before the Grand Jury investigation, sometime in October, 1965?

"A. It was in October of 1965.

"Q. You told Mr. Johnson that a prisoner named Charles P. McAdams had told you he was wanting to talk to a newspaper man about something that happened in the jail?

"A. He wanted to talk to a newspaper man, yes, sir.

"MR. SCANLON: Question 31. 'But sometime before you went on vacation you told Mr. Johnson that Mr. McAdams wanted to talk to him and then just a little bit before you left on vacation you told him that again, is that true?

"A. I told Rick that twice, yes." (R. pp. 6639, 43)

COTTEY ON RE-DIRECT.

Appellee reads further from Cottey's deposition on re-direct:

"(MR. JACOBS reads: This is the first answer, page 52:

> "A. I didn't make the contact. I just said that a prisoner—I told Rick that a prisoner wanted to talk to him. I didn't say whether it was McAdams; I'm sure of that—or what the man's name was; I'm sure of that.

"MR. JACOBS: Will you read the question? (The reporter repeated question number 101.)

"MR. SCANLON: Let the record show it is not only an improper question in the first instance but it has been repeated and repeated to the point of harassment of the witness.

"MR. JACOBS: Let the record show that question has been asked about that statement that time and that time only.

"MR. SCANLON: The record will show he was asked about the statement generally, I think, which includes—

"MR. JACOBS: That's right. Will you read the question? (The reporter repeated question number 101.)

"A. McAdams' name was never mentioned.

"Q. To Rick Johnson?

"A. To Rick Johnson. I am sure of that.

"Q. Q. No. 103: Did you know Elmer Reagan when he was in Jail?

"A. I wouldn't know the man if I seen him now.

"Q. Did you ever have any conversation with Rick Johnson about Elmer Reagan and his being beaten?

"A. No.

"Q. *Did you ever have any conversation with Rick Johnson in regard to a soldier by the name of Ronald Bryant, who had had tear gas fired at him?*

"A. *No. Wait a minute now. If I recall right, I think that was brought up to me by Rick, and asked me if I knew anything about it, and I knew nothing about the tear gas or the beating or nothing.*

"Q. *Did you then inquire about it at the Jail?*

"A. *I didn't have to inquire. It came to me—I can't remember how long it was—a few days after I heard some of the guys talking about the tear gas being used, that's all. As far as the beating, I knew nothing of the beating until I was on my vacation. I read it in the newspaper.*

"Q. *When Mr. Johnson asked you about the tear gas can you fix the time?*

"A. *No, I can't. It was before I went on my vacation.*" (Emphasis added) (R. pp. 7565, 7)

Summary on Tipsters.

Thus, the tipsters add up that *Cottey* told him McAdams wanted to talk to him (or a reporter), not saying what about. He got from *Finney* second shift deputies' names, and names of some longtime prisoners; *Atwell* heard the rumor Johnson had been spreading; and that he had stated the rumor to *Cottey, Lts. Chance and French,* but abandoned the last two as tipsters, on cross.

Johnson Abandons French & Chance as "Tipsters."

"Q. All right. Let's get down here to French. You said yesterday morning that Lieutenant French was one of the tipsters. Then in the afternoon in your testimony you said you believed French had given you some information. Now are you sure, or are you uncertain?

"A. I am pretty sure he verified the fact that he had heard from somebody else, or *he verified the tear gas episode, but I did not attempt to get from him the source of his information.*

"Q. *What did he say?*

"A. *I asked him if he had heard about King teargassing and beating a prisoner, and that the guy died.*

"Q. *What did French say?*

"A. *Subject to correction, I believe he said he heard about the tear gas. I don't know much else. That's all I can recall.*

"Q. *All right now. Let's go back to Bill Chance. You talked to Bill Chance.*

"A. *Basically the same answer to the same question by me.* (R. p. 7338)

Johnson Changes His Aug. 3, 1966 Deposition.

"Q. Do you remember you were asked whether or not you had those names from this deputy, and that you said that you merely got the impression that they would talk if you could get them out of there?

"A. I think I did say that on my deposition.

"Q. Well, first, let's cover it this way: What is the fact? This refers to Cottey, doesn't it?

"A. Yes, it does. (R. pp. 7346, 7)

"Q. Mr. Johnson, are you willing to say positively that Arthur Cottey gave you the names of these four men, John Martin Young, Forest Stalnaker, Otto Dearing, and Ronald Burton and told you they had seen that beating and that they would talk? Would you say positively that Arthur Cottey said that to you?

"A. Yes, he did. I would." (R. p. 7350)

Ten pages later the subject is further explored:

"Q. Incidentally, when Arthur Cottey called you and gave you the names of these prisoners, did he actually tell you that they would talk to you about the Reagan murder? Or did he just say that they wanted to talk to you?

"A. I think Mr. Cottey told me that all of them would talk to me, if I could get them out of that Jail to talk to them.

"Q. Did he tell you they would tell you about the Reagan murder case?

"A. That's what we were talking about, Cottey and I. That's what we were talking about, the reference for which he gave me these names." (R. pp. 7359, 60)

"Q. Now then, do you tell the Jury, will you tell the Jury, whether or not Arthur Cottey told you that Charles P. McAdams would tell you that Elmer Reagan was beaten by Sergeant King, or did you just get that impression?

"A. At the time that my oral examination was taken, I answered those questions to the best of my recollection, and I am trying to do so now. My best recollection now is that Mr. Cottey did say that McAdams would tell me about this beating, regarding King and Reagan.

"Q. Did he say that he had tear-gassed Reagan?

"A. Yes.

"Q. Obviously so. You still thought so when you talked to McAdams.

"A. Yes, sir.

"Q. All right. And then will you agree that I am correct, that in the deposition that I took from you on the 3rd day of August 1966, you did not say that Cottey said that McAdams had told him that he had seen Reagan tear-gassed or beaten?

"A. I agree that there is a contrast between then and this time.

"Q. Well, that has answered my question. You come half way but didn't come all the way.

"A. I think that is." (R. pp. 7362, 3)

Johnson Had Spread the Rumor of King-Reagan.

"Q. *So then you started asking a number of people if "they had heard this story. Is that right?*

"A. *That's correct.—Now which story are we—?*

"Q. *Well, you tell me what the story is.*

"A. *The story that Mr. King had beaten Reagan, tear-gassed him, beaten him again, and that Reagan had been taken to the Hospital and died.*

"Q. *Now that's the story that you started telling, on the advice of Harold Goodman, when he predicted that eventually you would get a tip?*

"A. That was the information I was attempting to verify.

"Q. That's the story that you told to various people down around the Jail and asked them if they heard anything about it; is that right?

"A. I didn't do much talking down around the Jail, to anybody.

"Q. All right, out away from the Jail, wherever it was you talked to people.

"A. *That is the information I attempted to verify, yes.*

"Q. *And you didn't ask them if anyone had died that had been beaten, or ask them to tell you of anything unusual, any unusual violence they knew about. Is that right? You related the story to them. Is that right?*

"A. *It's possible.*

"Q. *Why sure, it's possible. We know it's possible but we want to know whether you did.*

"A. *There are various ways of asking questions and trying to verify information. Sometimes I told*

people I talked to, what I had heard. Sometimes I just asked them, 'Anything going on down there? that's got the lid on it, that you know about?'

"Q. *How many people did you ask if they had heard this particular information?*

"A. *I don't recall the number.*

"Q. Well, when you say 'a number,' would you give us the minimum or the maximum?

"A. I don't know how I could do that. My tipsters that verified the information are the only ones I definitely tried to remember. There were a lot of people that I talked to. *I think I talked to some attorneys.*

"Q. *Did you talk to Bill Erbecker?*

"A. *I might have.*

"Q. Well now, Bill's down there a lot, isn't he?

"A. So are a lot of the attorneys, but they don't get back in the Jail all the time.

"Q. Bill Erbecker is there a lot, isn't he?

"A. Well, you'll have to ask Mr. Erbecker about that. I don't know how often he's in the Jail.

"Q. All right. Did you tell him the information you had received?

"A. I don't recall. I might have.

"Q. *How about Frank Hughes? Did you ask Frank Hughes?*

"A. *I don't recall asking Frank. I might have.*

"Q. *Remember a conversation you had with Frank Hughes in the City-County Building Cafeteria shortly after William A. Brown was indicted and Frank Hughes was appointed to defend him?*

"A. *I had a lot of conversations with Frank.*

"Q. *Do you remember a conversation you had with him when he told you about passing some money to Robert Atwell in the Speedway Magistrate's Court?*

"A. *That's right. I heard about it. I didn't know about it.*

"Q. *All right, you asked him about it then, didn't you?*

"A. *I did.*

"Q. *And that was right after he had been appointed to defend William A. Brown?*

"A. *Well, what's this? I don't understand this. What's this all about?*

"Q. *You don't have to understand it. All you have to do is answer the questions.*

"A. *Frank Hughes asked me, 'Rick, you hear a lot of things. Have you ever heard anything about me?' And I said, 'Yeah, Frank, I have.'*

"Q. What was it?

"A. I told him that a deputy sheriff had seen him pass money to Bob Atwell, that I had heard that. And he said, 'Rick, that happened.' Says, 'You know what that was? I loaned Bob two bucks to eat on.' That's what he said.

"Q. You told him you knew about that?

"A. I told him I had heard about it." (R. pp. 7340, 44)